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International Court of Justice

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Official Transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 5 July 1946, 1000-1700, Lord Justice Lawrence presiding.

THE PRESIDENT: Dr. Stahmer.

DR. STAHMER: If there had been a conspiracy to commit war crimes, then the war would have been waged, from the beginning, with utter ruthlessness and disregard of rules of war. Just the contrary happened. In fact, in the first years of the war --

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks you got a little bit further with your speech.

DR. STAHMER: I had to go a little farther in order to get this into the context, again; I had to start at No. 2, but if the Court wishes, I can continue with where I stopped. Especially in the beginning one endeavoured to wage war with decorum and chivalry. If any evidence is needed, a look into the orders of the German High Command regulating the behaviour of the soldiers in Norway, Belgium, Holland is sufficient proof. Moreover, a leaflet with "10 commandments for the conduct of the German soldier in wartime" was issued to the soldiers when they went into the field. Field Marshal Milch has read them out from his pay-book, during this trial. They all obliged the soldier to act loyally and according to international law.

A gang of conspirators at the head of the state which plans to wage a war without any consideration of right and morals would really not send their soldiers into the field with a detailed written order saying just the opposite.

I think: If the prosecution believes that these 22 men are conspirators and conspirators against peace, the laws of war and humanity, it is completely mistaken.

It remains for the defense counsels of the individual defendants to show what relationship their client could have had with the alleged conspiracy.

I just mentioned that Reichsmarschall Goering was the second man in the state. During the trial the prosecution also referred repeatedly to this

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elevated position of Goering's and tried to make it responsible for the defendant's special guilt pointing out that Goering, by virtue of this special position knew about everything, even the most secret matters, and had the possibility to intervene in a practical way on his own in course of Government business.

This opinion is wrong and is based on ignorance of the meaning of his position. It meant: According to rank Goering was the second man in the state.

This rank was a consequence of the fact that Hitler, in the fall of 1934, had made a will and by a secret Fuehrer order had appointed Goering as his successor in the government. In 1935 or 1936 this succession was fixed in an unpublished Reichslaw which was signed by all the ministers.

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On 1 September 1939 Hitler announced this law in the Reichstag. In this way the successorship of Goering became known to the German people.

Goering's task of deputising for the Fuehrer in the government now followed, but only in the event of Hitler being prevented by illness or absence from Germany - thus this occurred when in March 1938 Hitler spent a few days in Austria.

During Hitler's presence, that is as long as Hitler exercised his office himself, Goering derived no special powers from the deputyship.

During this time his authority was limited to the offices directly under him and he was not entitled to issue any official directives to other offices.

The consequence was:
As second man in the state Goering could neither rescind, nor change nor supplement Hitler's orders. He could give no orders whatsoever to offices of which he was not directly in charge. He did not have the possibility of giving any binding orders to any other office whether it were an office of the party the police, the army or navy, nor could he interfere in the authority of these offices which were not his own.

This position as second man in the state cannot therefore be used as especially incriminating for Goering; it is furthermore not fit to serve as a basis for the assumption of a conspiracy.

The defendant Goering never participated in the drafting or execution of a common plan or conspiracy which was concerned with the crimes stated in the indictment.

As already emphasized, the participation in such a conspiracy presupposes in the first place that such a common plan existed at all and that accordingly the participants had the intention and agreed to carry out the crimes of which they are accused These presuppositions are not in evidence in the case of Goering. One has to assume the contrary. It is true that Goering wanted to do away with the Treaty of Versailles and to secure again a position

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of power for Germany. But he believed he could obtain this goal, if not with the legal means of the League of Nations, at least with political means alone. The purpose of the rearmament was only to give more weight to the voice of Germany. The Weimar Government, which could not even express the self-determination of the Germans after 1918 in the surely very modest form of a German-Austrian customs - union, though they advocated this determination themselves, owed the lack of success of their foreign policy for Goering, just as for Hitler, mainly to the lack of respect for the German means of imposing power. Goering hoped, strengthened in his belief by Hitler's surprising initial successes that a strong German army, already by its mere existence would make it possible to secure German aims peacefully, as long as these aims kept within reasonable limits. In politics a state can only have its say and make its voice heard if it has a strong army to back it up, which demands the respect of other states. Only recently the American Chief of Staff Marshall said in his second annual report: The world does not seriously consider the wishes of the weak. Weakness is too big a temptation for the strong....

There was no arming for an aggressive war; not even the Four Years Plan, the purpose and aim of which has been clearly explained by the defendant himself and the witness Koerner was not aimed at the preparation of an aggressive war.

The General Field Marshals Milch and Kesselring have both testified in perfect agreement that the air force created by the armament program was only a defensive air force, which was not fit for an aggressive war and which was therefore called by them a dangerous air force ("Risiko Luftwaffe"). Such a modest rearmament does not allow for any conclusions of aggressive intentions.

After all this it is clear:

Goering did not want a war.

According to his character he was an opponent of war. Outwardly also, in his conferences with foreign diplomats and in his

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public speeches at every opportunity he has expressed with all possible clearness his opposition to war.

The testimony of General Bodenschatz explains most positively the attitude of Goering toward war. He knew him especially from the first world war and he has exact knowledge of the attitude of Goering to war from frequent conversations he has held with him. Bodenschatz states that Goering repeatedly told him that he knew the horrors of war very well from the first world war. His aim was a peaceful solution of all conflicts to spare the German people as far as possible the horrors of a war. A war would not be possible to burden with a second war a generation which had already experienced the horrors of one great world-war and its bitter consequences.

General Field Marshal Milch also knows from conversations with the defendant Goering that the latter opposed a war, that he already had not agreed with the occupation of the Rhineland and that he advised Hitler in vain against a war with Russia.

In public the defendant Goering, in his many speeches since 1933, frequently emphasized how much he had his heart set on maintaining the peace and that the rearmament had only been undertaken to make Germany strong outwardly and to enable her to play a political role again.

His serious and honest will for peace can be seen best from the speech which he made at the beginning of July 1938 in Karinhall before all the Gauleiters of the German Reich. In this speech he emphasized energetically that the foreign policy of Germany had to be directed in such a way that it would under no circumstances lead into war. The present generation had still to get over the last world war; another war would shock the German people. Goering had not the slightest reason to hide his true opinion before this gathering, which consisted exclusively of the highest party leaders. For that reason, this speech is a valuable and reliable proof for the fact that Goering really and truly wanted peace.

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THE PRESIDENT: I'm afraid the two voices are coming together in such a way that it is impossible to understand it. You had better stop for a minute, Dr. Stahmer.

The Tribunal will adjourn.

(A recess was taken.)

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How deeply the defendant Goering was interested in maintaining good relations with England is shown by his conduct at the conference with Lord Halifax in November 1937 at Karinhall, in which Goering, with full candour, put before Lord Halifax the aims of German foreign policy:

(a) incorporation of Austria and the Sudetenland into Germany,

(b) Return of Danzig to Germany with a reasonable solution of the corridor problem.

He pointed out at the same time that he did not want war for these aims and that England could contribute to a peaceful solution.

The meeting in Munich in the fall of 1938 was arranged at his suggestion. The conclusion of the Munich Pact is essentially due to his influence.

As, due to the occupation of the remainder of Czechoslovakia in March 1939, the relations with England had deteriorated considerable as England was very angry about this step Hitler's, which was a violation of the Munich Pact -- Goering made serious efforts for the restoration of normal relations.

In order to achieve this goal he arranged the meeting, described by the witness Dahlerus, with English industrialists at the beginning of August 1939 in the Soenke-Nissen-Koog near Husum. In an address he pointed out that under no circumstances must it come to a war with England, and he asked those present to contribute to the best of their ability to the restoration of the good relations with England.

When, after the often quoted speech of Hitler's to the commanders in chief of the armed forces on the Obersalzberg on 22 August 1939 the danger of a war became imminent, Goering summoned immediately --that is on the following day--the witness Dahlerus from Sweden and attempted, by-passing the Foreign Office, to reach an agreement with England for the prevention of war on his own responsibility.

The objection was raised here that Goering had left Dahlerus in the dark as to his true intentions. His efforts were not aimed at the maintaining of peace but only at persuading England to deny to the Poles the support guaranteed to them and thus to separate

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England from Poland, which would enable Germany after this separation to exert pressure on Poland to submit to the German demands, or to be able to attack Poland and to realize her plans towards Poland without any risk. The doubts about the honest will for peace are unjustified; the imputed intention was far from Goering's thoughts.

If this objection is based on the fact that Goering did not inform the witness Dahlerus either of the content of the Fuehrer speech of 23 May 1939 or that of the 22 August 1939, this objection is not relevant and nothing is gained by it.

Under no circumstances could Goering inform a third person--and especially a foreigner--of these strictly confidential speeches without exposing himself to the accusation of high treason or treason against his country. These speeches were all immaterial for the commission given to the witness, since here was the peculiar situation that Goering--after the efforts of the diplomats had reached a deadlock--knew as ultimo ratio of no other way out than to use his personal relations, all of his personal influence and his personal prestige.

What alone mattered for the activity of Dahlerus was that the foreign political situation, had become dangerously critical through the quarrel between Germany and Poland, of which also the witness knew and which had to be straightened out by an appropriate attitude on the part of England.

That Goering's aim was not to separate England from Poland has been clearly proven by the fact that Goering, to begin with, had transmitted to the British Ambassador in Berlin, Henderson, the text of the note which contained the proposition made by Germany to Poland - propositions which were called moderate by Henderson - and that, hereby, he tried to come to direct negotiations with Poland. Poland, however, obviously did not want an agreement with Germany. Several circumstances point to that.

The conflict with Poland existed for almost one year. Why did Poland not ask for a decision by a court of arbitration on

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the basis of the concluded arbitration agreement? Why did Poland not appeal to the League of Nations? Obviously Poland did not want any arbitration regarding Danzig and the Corridor.

The utterance of the Polish Ambassador Lipski to Counsellor to the Legation Forbes, which was stated by the witness Dahlerus, is even more proof for the unwillingness of Poland to come to an understanding.

Lipski said, he was not interested in any note or proposition by Germany; he was convinced that, in the event of a war, there would soon be a revolt in Germany and the Polish Army would march in triumph to Berlin.

This intransigent and incomprehensible attitude of Poland obviously finds its explanation in the fact that she felt too strong and secure by England's assurance.

The reference to the imminent revolt makes one believe that Poland was informed of the plans of the Canaris group to bring about a revolt. There can therefore be no question of an ambigious attitude or false play on the part of Goering.

The serious will of the defendant Goering, to maintain peace and to restore good relations with England is expressly recognized by Ambassador Henderson, who due to his thorough knowledge of the German conditions and his connections with the leading men of Germany had the right opinion also of Goering. I refer here to his book "Failure of a Mission", in which on page 83 it says:

"I would like to express here by belief that the Field Marshal, if it had depended on him, would not have gambled on war as Hitler did in 1939. As will be related in due course, he came down decisevely on the side of peace in September 1938"

Lord Halifax also, according to the information he gave, had no doubts that Goering's efforts for the prevention of war were sincere.

That after the outbreak of the war, which he had wanted to prevent with all the means at his disposal, but had been unable to prevent, Goering, as Commander in Chief of the air force exerted all his strength to win the victory for Germany is not contrary to the sincerity of his will to avoid the war. From that moment on he knew only his duty as a soldier to his fatherland.

At different times Hitler made addresses to the Commanders in Chief of the armed forces, so for instance in November 1939 on 3 May 1939 and on 22 August 1939. The defendant Goering, at his personal interrogation has already given extensive explanations as to the importance and the purpose of these addresses. It is important for the question, whether the fact that he was present at these addresses might constitute perhaps a complicity in a conspiracy in the sense of the indictment, that on these occasions Hitler solely and one-sidedly made known his opinion about military and political questions. The participants were only informed what possible political developments Hitler expected. The participants were never asked for their opinion. They also had no possibility to express their criticism to Hitler's opinion. Hitler did not ask his generals to understand his orders. All he asked of them was to carry them out.

His autocratic leadership of the state was exclusively directed by the principle : Sic voleo, sic iubeo, stat pro ratione voluntas, which he carried through to the last consequence.

How rigidly Hitler followed this principle can be seen from the fact that, after the address of 23 May 1939 -- as Milch stated in his testimony -- he forbade expressly all discussions of those present, even among themselves.

That Hitler was irrevocably resolved to an aggressive war could not be deduced by the participants from the said speeches and they did not deduce it. This has been confirmed unanimously by all witnesses who were present when those addresses were given.

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At that time, Hitler had actually not yet planned a war. In that respect the testimony of General Field Marshall Milch is very informative. When the witness, in the months following the speech of 23 May 1939, repeatedly pointed out to Hitler in personal reports that the air force was not ready for action with their bombing squadrons and that the air force had hardly any stocks of bombs, Hitler refused to give an order for the production of bombs and remarked that this manufacturing was unnecessary and superfluous. Hitler persisted in this refusal, although Milch pointed out that the production would take several months. Such an order was given by Hitler, only on 12 October 1939.

Hitler's exposition before the Commanders in Chief can be easily explaine by the peculiarity of Hitler, to develop frequently political ideas without bothering how to carry them out. In each case, his practical policy resulted from the requirements of the living development.

The defendant is accused of having ruthlessly plundered the territories, occupied by Germany and thus to have violated the Hague convention concerning land warfare. This accusation is not justified.

During his examination, the defendant Goering has explained in detail with absolutely noteworthy reasons that the Hague conventions on land warfare from the years 1899 and 1907 respectively cannot be made to apply to a modern war since they had become obsolete and insufficient in some respects at the beginning of World War II. At the time when they were worked out, aerial warfare, economic warfare and psychological warfare were still unknown. Total war which put the entire people and the entire national economy without exception at the service of the war, was also not known, Especially, economic warfare was not considered at all. Because of this gap, there is no international law which has been generally recognized, for economic warfare. Therefore, the old statement of Hugo Grotius applies to economic warfare that everything is permitted in war "quod ad finem belli necessarium est".

Naturally, this principle only applies so far as it has not been affected specifically by a differring settlement through treaties.

The following is to be said for the legal situation as it stands :

Until the beginning of World War I, it was generally acknowledged in international law -- in any case as far as land warfare is concerned -- that the war does not affect any private legal relations between the citizens of the belligerent states, that private property on principle was inviolable, that

the war would only be pursued with arms and that the enemy civilian population would not be affected by it. This method of warfare suffered a basic change at the outbreak of World War I, when England, in the field of naval warfare, applied her interpretation of war of people against people. At that time, the enemy powers went over to the course to paralyze the entire German national strength, disregarding all established rules of the law of naval warfare and of neutrality law, by cutting off the necessary raw materials and import of food. This new type of warfare corresponded to the Anglo-Saxon interpretatio which was joined in by France at the beginning of World War I, that war is no only fought against the fighting troops, but against the entire population of the enemy. The citizen of the enemy state is the enemy of England, his property is enemy property which is subject to seizure by the British Government.

With this, naval warfare was not only directed against the combat forces, but also against the peaceful subjects of the belligerent enemy.

This goal was achieved by the total blockade carried out by England. The Hague Convention did not contemplate a total blockade in the form in which it was carried out by England. This blockade made any supplying of Germany through neutral countries impossible.

Under these circumstances, Germany cannot be blamed for applying the method used by England with means of her naval power, for the warfare on land accordingly

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This fact leads to the following considerati n:

The rules of land warfare apply according to their sense, to land warfare. There the principle of protection of private property dominates. In naval warfare, however, prive property is unprotected. Is it therefore possible that the rules of land warfare with their restrictions apply also to a combined sea and land war? Would it be just that goods are taken away from one at sea while he would not be allowed to touch the same goods from the one taking the goods on land?

According to established international law, the principle exists now as before that private property is actually inviolable during war. This principle only suffers exception insofar as the Hague Convention of land warfare permits certain encroachments on private property, and insofar as encroachments may also have been caused by a state of emergency in which the state may find itself, which then would be justified to the extent in which they appear necessary in the interests of self-preservation of the state. In this scope therefore, actions are also permitted during war which would otherwise not ccomply with the laws of war, and would thus be contrary to international law.

By the fact that enemy warfare disregarded the established rules of naval warfare, Germany was driven into a state of economic emergency.

If the enemy powers had observed this established law of naval warfare, then Germany could have supplier herself through neutral countries, and the state of economic emergency during the war would not have occurred.

As the enemy power did not, however, observe the established blockade regulations, they cannot expect Germany to observe the regulations on requisitioning which formpart of the rules of land warfare.

Thus, wherever the life interests of a state are threatenedin this manner, there prevail a national state of emergency which has the legal effect that the state does not act illegally when committing a violation of international law which is necessary for the repelling of imminent danger.

The economic situation of Germany was extremely threatening during the course of World War II by theaction of the enemy powers. Any connection with neutral countries was made impossible for Germany by the total blockade, since a sufficient supply of raw materials necessary for the conduct of the

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war, and of food for the feeding of the civilian population, was made impossible. Germany also had to takecare of the food supply of the enemy civilian population in the occupied territories. Germany was therefore forced for the sake of supporting her own economy, which would otherwise have collapsed, to use the stocks of raw materials and food available in the occupied territories, and all otheritems necessary for the continuation of the war for herself, whereby the interests of the population in the occupied territories were given due consideration. In this, the principles established in the preamble to the convention concerning the rules and customs of land warfare, dated 18 October 1907, as they result from the customs existing among civilized nations, from the laws of humanity and from the demands of publicconscience, were strictly observed. A resignation of the right to use these sources of assistance in the occupied territories would have meant the abandonment of the independence and existence of the state, it would have meant unconditional submission. Emergency which necessarily leads to submission during war is the highest and most genuine emergency in the life of a nation.

By referring to the state of emergency, however, only such actions are covered which are necessary for the alleviation of danger which could not be repelled otherwise. The limitations naturally fluctuate, and the establishment of whether a genuine emergency act is concerned cannot always be easily made in individual cases. Here the Tribunal will have to consider in favor of the defendants the special circumstances and the conditions which were hard to view during the time ofwar.

It has been proved that the limitations remained unobserved by the defendant intentionally or carelessly.

It must be left to the examination of the Tribunal whether the defendant personally can be responsible for a violation, possibly committed intentionally orcarelessly--a violation which has been committed exclusively by him in his capacity as plenipotentiary of the Fuehrer -- or whether in such a case there is only a liability of the state. This side is of the opinion that also in this case there is only a violation of international law which does not call for a personal liability. Conditions were peculiar in the Eastern theater of war because there was no private economy in the East, but

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only a national economy strictly regulated by a central office. The juridical situation here was that property of the enemy state could generally be claimed as war loot. For therest, a particularly careful regulation was made, which was defined in the so-called "Green folder". The regulati ns contained in the Green folder did not suggest any looting or annihilation of the population, as asserted by the prosecution. Its tenor was rather the mobilization of economy and the rules for keeping it going, the seizure and the orderly utilization of stocks, and traffic-installations in the zones to be occupied in the course of fighting, whereby account had to be taken of the Russian behavior, and the far-reaching destruction to be expected in consequence. The folder does not contain any order or suggestion which might convict certain groups of the population of activities beyond the needs conditioned by war. This decree, for which the defendant Goering has taken full responsibility, does not furnish any reason for an indictment.

In all of this, one must not disregard one thing:

This was was of such gravity, such proportions, such duration and totality as the creaters of the Hague Convention certainly never had or could have had the remotest idea. It was a war in which nations fought for their existence or destruction. It was a war in which all values had changed. Thus the defendant had the right feeling when he declared:

"After all there is no legality in the fight for life or death."

From the standpoint of necessity, a justification can also be found for the deportation of workers from occupied territories to Germany.

In his testimony the defendant stated in detail all the reasons which in his opinion made this measure necessary.

For the rest the defense counsel for the defendant Sauckel, Herr Dr. Servatius, will review these matters in detail. Therefore, I do not need to concern myself with further considerations in this regard.

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I now turn to the matter of plundering of art treasures: As to the reproach of art treasure looting the defendant has made an inclusive statement of facts, which will be referred to in orde to justify his conduct.

In addition it will be observed that Reich Marshal Göering was not directly engaged in the safeguarding of art treasures in Poland.

Not one of these art treasures did he take for his own collection. In this respect the defendant cannot be incriminated in any way. By order of the Fuehrer works of art in France which were owned by Jews were temporarily confiscated for the benefit of the Reich. They were considered as unclaimed property because their owners had left the country.

Of these confiscated objects, with the express approval of the Fuehrer, Goering received but a small part, and not for himself personally, but for the gallery he had planned, and in which he also intended to incorporate the works of art already in his possession.

He wished to acquire these objects at a price established by French art experts, and the proceeds were to be distributed amongst the dependents of French war victims.

The juridical situation, therefore, was as follows:

The objects were confiscated by decree of the Fuehrer for the benefit of the German Reich. By this confiscation the former owners lost their right to possession and it was transferred to the Reich. The objects which were left him Goering acquired from the Reich, which was their present owner.

The Reich obviously saw in this a step which, though it was proved premature by the course of events, was to forestall the peace-treaty to be concluded at the end of the hostilities when the final accounts would be made.

This is similar to the confiscations and seizures of property carried out at present in Germany in view of the ultimate peace-treaty.

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Therefore, the question remains open whether the Reich Government was juridically entitled to confiscate the goods and to become their owner.

A solution to the question is no longer necessary, because Goering acted in good faith in the matter of this acquisition. In his testimony, he emphsized his belief that he was entitled to acquire these things as they had been previously confiscated by the Fuehrer.

In consideration of these facts there cannot be any question of looting.

Certainly there could be no objection to the purchasing of articles which occurred during normal business transaction, and which the defendant had been offered spontaneously and the sellers were only too eager to dispose of in view of the good price they received for them.

It is the same case with objects, which the defendant had acquired through a voluntary exchange in which the second party to the contract enjoyed the same rights as himself.

I shall now turn to the matter of the shooting of 50 airmen.

I will consider the accusation of the shooting of 50 officer. of the British Air Force after their escape from the prisoner of war camp Sagan.

The act of prosecution (page 33 of the German translation) reads as follows:

In March of 1944, 50 officers of the RAF, who had escaped fro Stalag-Luft III in Sagan were murdered after their recapture. According to a later declaration of the prosecution the circumstance. were as follows:

During the night of the 24th and 25th of March 1944, 76 officers of the RAF escaped from the prisoner of war camp Stalag Luft III in Sagan. 50 of these officers were shot by the Security Service after they had been recaptured.

An investigation must be made on the following points: Who gave the order for the shooting? Did Reich Marshal Goering

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play any part in this occurrence? Did he actually take part in the drafting of the order to shoot these 50 airmen? Did he agree to the measure although it was a grave offense against paragraph 50 of the Geneva Protocol dealing with the treatment of Prisoners of War?

The prosecution states that the defendant Goering collaborated in the drafting of this order. It refers amongst other things, to the reports which Major General Westhoff and criminal-counsellor Wielen drew up while they were in British custody. But the interrogation of these witnesses in court, as requested by the defense counsel, as well as the bringing forward of further evidence which has been so carefully accomplished before the Tribunal, has shown in the meantime that the previous statements of Westhoff and Wielen were incorrect, and, in respect to Goering's presence at the camp conference and his knowledge of the shooting-order, were only based on suppositions which had their roots in the fact that it was a question of a prisoner of war camp for airmen. The result of the evidence was as follows:

At this camp conference of 25 March 1944 Himmler reported the escape of the 76 officers to the Fuehrer. For this Hitler severely reprimanded General Field Marshal Keitel. He considered the event to be of great danger to public security, since the escaped officers might assist the six million foreigners in Germany in the organization of an armed revolt. Then Hitler gave the order: "The prisoners will remain with Himmler".

Keitel definitely refused the retransfer to Himmler of the 15 officers who had already been recaptured by the Armed forces and returned to the camp, and these officers remained unharmed.

At this camp conference in the presence of Keitel, Hitler did not order the shooting of the prisoners, who were to remain in Himmler's hands. Neither Keitel nor Jodl expected such measures. Jodl expected the escaped prisoners to be sent to a concentration camp for some time. Keitel and Jodl agree in their testimonies that Reich Marshal Goering did not attend this meeting. Therefore,

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it cannot possibly be correct that General Field Marshal Keitel declared in a conference with General Westhof that he had been reprimanded by Goering at the camp meeting on account of the prisoners' escape.

General Koller has testified that General Korton assured him over the telephone around about the end of March or beginning of April 1944, that the Luftwaffe, namely the Reich Marshal and Korton himself, were not involved in the order and had only been informed of it later. Furthermore Koller testifies that the Reich Marshal was extremely angry about the shooting.

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These statements are completely in accordance with the declarations of Reich Marshal Goering, who was on a vacation at the time fo the conference with Hitler. The fact of the escape reached him only through a telephone report of his adjutant. It was only after his return from vacation some time around Easter 1944 that he learned, through his chief of general Staff, Korten, about the fact that shootings of prisoners had taken place. Reich Marshal Goering was much upset about this last report because he had only condemned the deed in itself but moreover feared reprisals for his own airmen.

Upon inquiry, Himmler then confirmed the executions to Reich Marshal Goering with the justification that an order to that effect had been issued to him by Hitler.

It is made clear by this conversation how the execution was possible and how its perpetration could remain concealed from the Wehrmacht. In the absence of Keitel and Jodl, Hitler issued the order to Himmler to carry out the execution and Himmler then, unknown to the Wehrmacht, immediately passed on the order to the Reich Security Headquarters - i,e, according to Kaltenbrunner's Statement- to Mueller or, as the case may be, to Nebe.

Not only did Reich Marshal Goering severely upbraid Himmler -because the latter had executed the order without informing Goering- but he raised the most vigorous protest against this measure in a subsequent interview with Hitler. This resulted in a violent argument between Goering and Hitler.

Because Goering strongly condemned such proceedings, he requested shortly afterwards that the prisoner camps be taken in charge by the OKW. On being questioned, Field Marshal Keitel confirmed, as witness, that a few weeks after the occurrence, he received a letter from the general quartermaster of the Luftwaffe, in which the Luftwaffe requested the taking over of its camps by the OKW.

This result of the examination of evidence , which -as already emphasized- straightens out the initial statements of the witnesses Westhoff and Wielen, which are contradictory in many respects, as well as Keitel's earlie declaration of the 10 November 1945, also, vindicates the conclusion that Reich Marshal Goering was in no way involved in this affair, that he condemn it most severely when he was informed of it and that he therefore cannot be

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called upon to answer for this extremely regrettable and reprehensible order which it was not within his power to prevent.

Lynch Justice.

The Prosecution has gone on to the question of "lynch justice" which was practised by the German population in individual cases in 1944 when enemy airmen had been shot down. For these occurrences, the defendants, especially Reich Marshal Goering, are held responsible. The charge that defendant Goering or the Whermacht are in any way involved in this action, that they issued orders or instructions to this effect or even merely approved the action is seen to be entirely unjustifiable. The examination of evidence here has thoroughly cleared up the matter in favour of the defendant.

Witness Colonel Bernd v. Brauchitsch pointed out during his interrogation on the 12 March 1946 (page 5680 of the German minutes) that in Spring 1944 there was a sudden increase in the losses among the civilian population through machine-gun attacks by enemy airmen.

To support their charges against Reich Marshal Goering, the prosecution invokes fusi of all a protocol of 19 May 1944 (L. 166) concerning the so-called "Hunting Conference" which was held on the 15 and 16 May under the presidency of the defendant.

Numbered as item 20 of this script is a statement of the defendant, saying he would suggest to the Fuehrer that terrorist enemy airmen be immediately shot on the place of their offence. The defendant most definitely denies having made any pronouncement to this effect and justly points to the following circumstances which belie any such statement:

The session stretched over two days. Numerous technical and organisational questions were discussed. The question touched upon in item 20 had nothing whatever to do with the agenda for the rest of the session, least of all with the purpose of the session. The remark has its place amongst themes which deal with matters of an entirely different kind and has no point in this conjuncture.

Besides, Goering -had he approved and wished it- could himself have immediately issued such an order without further ado, as everyone knew the Fuehrer was well disposed to him.

The decisive fact is that the statement is in the sharpest contradiction with the fundamental attitude of the defendant. He always stood for the view that the enemy airman who is shot down is his comrade and must be treated as a comrade, a fact which I have already remarked upon in another connection. Moreover, in the question as to how terror airmen are to be treated, he has defended his position with all frankness against the conception upheld by Hitler and has made no secret to Hitler of his entirely different opinion.

In view of this unwavering attitude and its resulting policy, it is utterly out of the question that he should suddenly have urged Hitler to issue the above-mentioned order against the terror airmen- an order which he opposed with all his might and the execution of which he sought to prevent by every means as soon as it came to his knowledge. And he did succeed in fact in preventing the execution of this order.

If the terror airmen were actually discussed at the session, this discussion could only have occurred with the implication that the Fuehrer suggested such a measure.

With reference to the minutes, the following fundamental remarks must be added:

We have here the combined notes of a young officer, stretching over a two-day session during which there has been a great deal of talking and cross-talking. Experience made in many other cases has shown that such recordings are often very unreliable and have even at times reproduced the subject of the discussion in an utterly perverted form, precisely because the author of the script,- especially when several participants were present, and were talking at random, - could not follow the course of the discussion and consequently did not reproduce the substance of it accurately especially when, in addition to this, he was relayed by other people; this explains many factual errors as well as the inadequacy and unreliability of such records.

The minutes were never submitted to the defendant. He has not therefore been able to verify their contents nor to correct their errors.

Records of this sort, which are built up in the way described above and which are not submitted to the perusal and approval of the parties concerned are worthless in the production of evidence.

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They cannot in themselves alone serve as an adequate means of proof either to charge or convict the defendant. They can therefore only be made use of to the detriment of the parties implicated when the contended facts are confirmed by other material brought for evidence from sources external to these minutes. In the present case, there is no confirmation from other evidence that Goering actually made the statement contained in item 20 or made a request to Hitler to that effect.

The note dated 21 May (731-PS) fails to provide support for the claim. The note :"General Korten teilt nach Vortrag des Reichsmarschalls mit" can not, in viewof the defendant's undisproved statement, possibly mean that the Reich Marshal delivered an address on this matter in Hitler's quarters, but solely that Korten reported on this subject to the Reich Marshal and that Korten informed the Reich Marshal of Hitler's order.

The rest of the examination of evidence has made it clear beyond doubt that Goering was against a special treatment of enemy terror airmen who had been shot down, and that he opposed Hitler's order.

These attacks by enemy airmen were directed, within Germany, against civilians working in the fields, minor railway lines without any military importance and against pedestrians and cyclists.
This constituted a gross violation of the Hague Rules of Land Warfare, according to which any combat act against the non-combatant population of the country is prohibited, and any attack or shelling of open cities, villages, residences or buildings is forbidden.

According to the opinion of the witness v. Brauchitsch this behavior which quite evidently violated international law caused Hitler to order measures against these aviators themselves, besides defensive measures. Relative to this Hitler advocated -as far as it is known to the witness- the most severe measures; lynching justice was to be given the right of way.

This stand of Hitler toward the violations of international law by enemy aviators, however, did not meet with the approval of the Armed Forces, especially not with that of Reich Marshal Goering and that of his Chief of Staff (Generalstabschef) General Korten. Both of them did condemn to the utmost the attacks of enemy aviators which were exclusively directed against the defenseless civilian population.

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However, they nevertheless opposed the handing-over of defenseless shot down aviators to the aroused mob for the carrying out of lynching justice, and they did not think these measures an appropriate means of combating this conduct which was in violation of international law.

The witness General Koller expressed himself to the same effect. Early in June 1944 General Korten informed this witness of the fact that the Fuehrer intended to decree an order to the effect, that terror-aviators were to be surrendered to public fury.

In the course of repeated conversations the witness Koller and General Korten arrived at the opinion that the conception of the Fuehrer was to be rejected. They did consider the direct attacks of enemy low-flying planes on individual civilian persons, women and children, concentration of civilian persons, school-classes and Kindergardens out on walks, farmers at work in the fields, as well as attacks on public passenger trains and hospitals as ruthless; however, neither did the two see a passable road or a solution of the difficult problem in the Fuehrer's order. They were of the opinion that such an order was contrary to basic military conceptions the articles of war and to international law, and that it would give cause to numerous evils through which also other enemy as well as own crews would have to come to harm. And finally such an order could exercise also in its effects, a harmful influence on the morale of our own crews.

All these reasons caused the Armed Forces to reject Hitler's demand , and the attempts of the Armed Forces were now directed toward preventing the disapproved conception of Hitler. The witness v. Brauchitsch therefore credibly states, that the Armed Forces now looked for a way out which way was seen in the fact, that the higher command levels were deceived by measures which were not actually carried out.

The witness Brauchitsch was ordered by Reich Marshal Goering to define on discussion with the OKW the concept of terror-aviators. In the subsequent discussions and exchange of correspondence those cases were mentioned which represented violations of international law and which were to be considered criminal acts. By this definition of the concept a lynching lustice was to be prevented. The exchange of correspondence which lasted for a longer period of tiem showed the tendency of the agency to prolong the matter as much as possible.

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The witness Koller is justified in emphasizing that this exchange of correspondence shows all signs of a "delaying action to gain time", i.e., those concerned either did not want any decision, or they wanted to postpone it as long as only possible.

In particular the margin note on document 785 D (Exhibit GB 318), entitled: "No answer received from Commander in Chief of the Air Force", allows for the conclusion that the Reich Marshal purposely wanted to prolong the matter. Furthermore Reich Marshal Goering, as can be seen from the letter of 19 June 1944 (D 779) maintained the opinion, that in every instance he considered legal procedures also against terror-aviators as definitely necessary. If it is stated in a subsequent document of 26 June 1944 : "The Reich Marshal agrees with the announced formulation defining the concept of terror-aviators and with the suggested procedure", then the agreement with the procedure refers exclusively to the suggested procedure of publication suggested in the final paragraph of the letter of 15 June 1944, for which Reich Marshal Goering's approval had been requested. That the Reich Marshal Goering until the end of the war maintained the old aviator-standpoint, according to which enemy aviators as soon as they have been shot down are to be considered and treated as comrades - was not only expressly deposed by the witness General Field Marshal Milch, but is also emphasized by General Koller with the following words :"Undamaged by occasional expressions of displeasure the attitude of the Reich Marshal always remained correct and valiant in accordance with his frequently emphasized flying tradition which he had retained from the First World War. In understandable anger about great difficulties in the air defense, pressed by the Fuehrer, he perhaps for once used harsher words, which were quickly forgotten", and the witness does not know of any case "in which such a spontaneous displeasure caused the Reich Marshal to take incorrect of harsh measures against members of the enemy air forces".

The behavior of the air force as a whole was also correct and humane at all times. To fight chivalrously was a matter of honor with the German aviators. The air Force as well as the defendant Goering retained this point of view, although as Koller express mentioned the flying personnel felt extremely bitter over the strafing attacks on German crews suspended on

parachutes, and individual hotheads spoke of equal measures as reprisals.

The best testimonial for the exemplary comradely behaviour of the Air Force even toward an enemy, who did not observe the rules of warfare can be clearly seen from the description of the witness Koller about the establishment of a sea-emergency-service of the Air Force, which brought aid to Germans as well as the enemy in an equal measure and which carried on despite enemy attacks in violation of international law, with its attempt to provide aid for both friend and enemy in need. Accordingly it must be determined:

The Armed Forces and the defendant Goering have rejected the lynching justice as well as all procedure against the terror-aviators, no in accordanc with legal regulations and have not issued any orders to troops under his command; in no case have enemy aviators been shot by the Air Force or by the Army, or handed over to the Security Service (SD).

Gestapo -K.Z.

The prosecution accuses the defendant Goering of having established a reign of terror in Prussia immediately after 30 January 1933 in his capacity as Prussian Minister of the Interior and soon afterwards as Prussian Minister President in order to suppress all opposition against the Nazi-programm.

In order to carry out his plans he had used the Prussian police, which he had ordered as early as in February 1933 to protect the new government by proceeding ruthlessly.

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against all political opponents without consideration of the consequences.

In order to safeguard and consolidate the power, he had created the feared Secret State Police and established concentration camps as early as spring of 1933.

To these accusations the following is to be said:

It was natural and cannot serve as an accusation against the defendant, and it would rather have been a severe violation of the duties entrusted to the defendant, if he had not devoted himself with all his strength to the safeguarding of the new government and taken every imaginable precaution in order to make any attack on this new government impossible from the very beginning. In order to achieve this goal first of all the police institutions had to be considered.

It only remains to be examined, if the means, whose application the defendant considered necessary, were objectionable:

The question is to be answered in the negative because of the following considerations:

In every state the police is the inner-political instrument of power; in every state it has the task to support the government, to protect it in every direction and to render the disturber of the peace and the violator of the law harmless by force of arms, if necessary. The defendant transferred the same tasks to the police which was under his direction, whom he ordered in the speech mentioned by the Prosecution, to act energetically and to fulfil their duties conscientiously. To what extent such an appeal for the performance of duty should not be permissible remains incomprehensible.

In his interrogation the defendant Goering described expressly, for what reasons and along which lines he considered a reorganization of the police as necessary and these directives cannot be objected to.

I should like to point out in this connection that - according to the reorganized rules of international law a sovereign state has the right to regulate its internal affairs as it deems fit to do.

The reform of the police is an exclusively internal affair. The violation of rules, generally recognized by international law, is, therefore, out of question in this respect.

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A political police was in existence before the assumption ofpower as well. Before the 30th of January 1933, it was called Police Department Ia, which among other things had to watch and to fight political adversaries. National Socialists and Communists in particular. Such a police dealing with the same tasks was also needed after the assumption of power in order to protect the new state against attacks, which threatened it in particular from the very strong Communist Party.

In order to make clear that this department of the police was charged exclusively with safeguarding the state against enemies of the state it was named "Secret State Police."

As long as the defendant Goering was head of the police this was, in fact, only the case until 1934 as then Himmler was put in charge - he strictly confined himself to the tasks prescribed to him, did not transgress his authority and no misusd of power occurred. The evidence produced has shown nothing against the defendant Goering for this period of time. Should, at a later date, the Secret State Police have transgressed their authority and should have committed illegal acts the defendant had no knowledge of them and did not approve of it. For mistakes and crimes committed by his successors which remained unknown to him, he cannot be held responsible.

There appeared in court a witness whose testimony was very incriminating for the defendant. This was the witness Dr. Gisevius.

The defendant refuses on principle to deal with the statement of this witness. He wants only to point out that this statement is untrue in all points incriminating the defendant.

The demonstrative force of this statement depends on whether this witness is considered to be trustworthy or not.

My fellow defense counsel, Dr. Nelte, has agreed to deal with this question extensively, so that - in order to avoid repetitious statements I shall refrain from further declarations.

Of course, the assumption of power by the National Socialist party met with resistance, and particularly the leftist parties were anything but satisfied with the situation thus created. The opponents were by no means

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weak, neither numerically nor in the means at their disposal. The new rulers were, therefore, afraid of serious dangers to their power, if they let the opposition parties continue their activity without hindrance; they had accordingly to take preventive measures against such dangers in good time. In order to stabilize and consolidate their own power and to nip in the bud any possible source of unrest, the defendant Goering considered it necessary for reasons of state to settle at one blow both leaders and officials of the communist party and its organizations. The defendant has spoken at length about his reasons for such acts. For the removal of danger and to ensure the safety of the state, the measures taken by the defendant were, for the government, a necessity caused by the unsettled nature of the times. As it was a preventive measure, it was not necessary for a provisional arrest that a criminal act against the government had already been committed or was, obviously, on the verge of being committed. The fact of membership in itself and previous activity in the said party was enough for arrest, as it was a political act of self-protection on the part of the government.

Such considerations led, very soon after the assumption of power, to the establishment of concentration camps, of which there were 2 at the time when defendant Goering was at the

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head of the police. The aim of such camps was to hold provisionally politically unreliable persons, who might be of danger to the new state, until they either had adapted themselves to the new political conditions or until the power of the state had become so great that such persons could no longer endanger it. I can omit the next few pages and I shall continue to page 61, paragraph 4.

No different were the considerations which influenced the defendant Goering, when he created concentration camps in 1933 and issued laws concerning the Secret State Police. These were intended to be as he conceived them, a means of cleansing and strengthening the young community of the people. He did not aim at a definite annihilation of political enemies but after a certain period of education interceded generously for liberations, and discharged at Christmas 1933 about 5,000, and in September 1934 about 2,000 prisoners.

He vigorously counteracted inevitable abuses and errors which he openly admitted in the book he published in 1934, intended for the British public "The Building of a Nation". He let, for example, the Communist leader Thaelmann personally report to him about his conplaints in the concentration camp and took care to remove their cause. He dissolved the so-called "wild" camps of Stettin and Breslau, punished the Gauleiter of Pomerania, who had organized this camp without his knowledge and against his will, and had those responsible for these wild concentration camps brought up on trial for their infringements of the regulations.

This attitude of the defendant Goering denotes that he never intended the actual physical annihilation of the prisoners. If the prosecution establishes that this was all in execution of a conspiracy which aimed at committing crimes against humanity, such an interpretation has no bearing on the reality of political life in the years in question. Such a conspiracy did not exist, nor was it the intention of the defendant, to commit crimes against the principles of humanity nor has he committed any such crimes. As one of the political trustees of the German government, he felt himself bound to safeguard it against dangerous disturbers of the peace and to contribute accordingly to the permanence of the National-Socialist way of life. Far from looking upon such measures as criminal, consider them on the contrary to be

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the inevitable means of consolidating the political order as a basis of all law.

In the year 1936, the leadership of the police and, therefore, the management of the concentration camps, passed from the defendant to the Reichsfuehrer SS Heinrich Himmler. The defendant cannot be held responsible for the subsequent evolution of the concentration camps; for the fact that they became especially after the outbreak of the war more and more gruesome places of torture and death, and led -- partly intentionally partly through the chaotic war conditions -- to the death of countless people, so that finally, in the last days before the breakdown of Germany, and through errors in organization they turned into one vast graveyard.

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Certainly he knew that there still were concentration camps, also that the number of inmates had risen because of war tensions, and that they also contained foreigners because of the expansion of the war machine over all of Europe - but the horrible occurences as they have been disclosed in this trial were unknown to him. He knew nothing of the irresponsible experiments which were being carried out on inmates because of misinterpretation of true scientific spirit. The testimony of witness Field Marshal MILCH has shown that the Luftwaffe was not interested in these experiments, did not participate in them, and that the defendant personally did not learn anything specific at all about this matter.

By no means, did the establishment of concentration camps as such have anything to do with the later extermination of Jews which apparently originated in HEYDRICH'S and HIMMLER'S brains, and was kept secret in a master- manner, and was disclosed after the collapse as the horror of Auschwitz and Maidanak.

This beings me to the Jewish question:

The defendant GOERING has explained in detail his views on the Jewish question during his interrogation as witness; furthermore, he has shown in all their details the reasons which influenced the National Socialist party and after the siezure of power, influenced that State, to take a hostile attitude toward the Jews.

The defendant is reproached for having promulgated the Nurnberg laws in the Year 1935, which were intended to keep the race pure, and that in his capacity as Commissioner for the Four Year Plan, he issued decress during the years 1938 and 1939 which had as their aim the exclusion of Jews from economic life.

Furthermore, he is blamed for a number of other laws which meant a one-sided and serious intervention into the legal sphere of Jews.

The legal reason for this reproach, which is devoid of any foundation, is obscure.

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For here it is a question of a purely domestic problem - namely the regulation of the legal position of one's own subjects; according to interntionally recognized legal opinion at that time, the German Reich as a sovereign state could freely settle such a problem.

Even if these encroachments were harsh and the limitations of citienship rights were extremely severe, they nevertheless in noway comprise an offense against humanity.

Such legal provisions which limit a certain race or a certain circle of citizens in their legal position have also been made by other states without offense being taken at such measures or without other states considering themselves induced to intervene. Reich Marshal Goering always refused any illegal or violent action against Jews. This is clearly shown by his attitude toward the action against Jews during the night of 9 to 10 November 1938, instigated by Goebbels, of which he was informed only after the deed had been done, and which he condemned most severely. In this respect, he raised serious objections with Goebbels and Hitler. On this matter, the precise statements of witnesses BODENSCHATZ and KOERNER are available. The testimony of Dr. UIBERREITHER shows how greatly GOERING disapproved of this action. According to the former, the defendant summoned all Gauleiters to Berlin several weeks after this incident and in an address censured the violent action with the sharp words that this action did not correspond to the dignity of the state, and that it had caused serious damage to German prestige abroad. That the defendant was no race fanatic, became generaly known by his expression: "I decide who is a Jew". It has been established sufficiently that he aided many Jews.

He was informed only at the end of the war about biological extermination of the Jews. He never would have approved such a measure, and opposed it with all his might. For he had too much political insight not to recognize the tremendous and at the same time, senseless dangers which would perforce result for the German people from such a brutal and detestable extermination drive.

Goering had already proved by the above mentioned speech to the Gauleiters that he did not wish to ruin himself in the eyes of the world public and world opinion because of the treatment of Jews.

It is therefore out of the question for Goering to have agreed to such an undertaking or for him to have participated in it in any manner. It is understandable, if it is held against the defendant, that he should have been informed about such horrible measures as the second man in the state.

Furthermore, it is no wonder if such statements of the defendant that he knew nothing of these atrocities, are met with a certain amount of distrust.

Despite such doubts, however, the defendant insists that no information about such acts ever reached him.

This ignorance of the defendant - which can be completely understood only by one familiar with German conditions - may be explained from the fact - and this is the sole solution of the riddle - that HITLER, as was also emphasized by General JODL during his interrogation, knew most masterfully how to keep his actions secret, to obliterate all traces of his atrocities, and to deceive the surrounding world and even his and Hitler's closer entourage.

In this connection, I also refer to the testimony of witness HOESS who confirms Himmler's instruction concerning absolute secrecy toward everyone.

The question may come up here: Did not the legal obligation exist for the defendant to instigate investigations about this matter and to get reliable information as to the true whereabouts of supposedly evacuated Jews, and as to their fate? And what legal consequence results if he carelessly refrained from such investigations and thus carelessly violated his legal obligation to act incumbent on him by virtue of his position? The decision of this extremely complicated question of law and fact may be left undecided because Goering, even as the second man in the state, did not have the power to prevent such measures if they were carried out by Himmler and were ordered, or at any rate, approved by Hitler.

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Mr. President, yesterday I stated that I still wished to deal with the case "Katyn", and I intend to interpolate, dealing with this matter, before I go on with my conclusion. I am sorry I was not able to get any translations in this respect because the testimony was only given a few days ago. However, this matter is not very long. The interpreters have a copy. I shall begin with this report.

A rather decisive attitude has to be taken in the case of the Katyn case, in which the taking of evidence was concluded only a few days back. The Russian prosecution based their indictment on the findings of an investigation, which is set down in Document USSR 54. The following conclusion is drawn from the entire evidential material as presented:

First of all, Polish prisoners of war, who were in three camps west of Smolensk, were still there in these three camps when the Germans came into Smolensk, up to and including September, 1941. Second, these prisoners of war were taken from these prisoner-of-war camps by the German occupation troops in the autumn of 1941. Third, the mass shooting of the Polish prisoners of war was carried out by the German Military authorities who had concealed themselves under the code name "Staff of the Engineering Battalion 537" at whose head was Colonel Ahrens, together with his co-workers, Lt. Rex and Lt. Hodt.

We are asking ourselves, did the prosecution prove this accusation? This question has to be answered in the negative. From the contents of this document we can not determine any fact of guilt, as the time of this perpetration, September of 1941, is determined and as the act of the crime at Katyn forrest is specified. With the material at hand, which limited this crime so very much, it was the sole work of the prosecution to prove that these things did take place; but these facts do not stand up after a subsequent examination.

First of all we concern ourselves with the persons involved. Lt. Ahrens cannot be considered one of the perpetrators of this

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misdeed because this deed was committed in September, 1941, and Ahrens, together with Regiment 537, took over the command at the end of November, 1941. That was when Ahrens came to Katyn, and up until that time he had never been in the Eastern theater of war. Before Ahrens, Colonel Bedenck was in command of the regiment. He came to the regimental staff in August of 1941 and then took a leave. Before Colonel Bedenck, First Lt. Hodt, at the end of July of 1941, immediately after the capture of Smolensk, came to the Dnieper Castle, together with a First Commando, and he remained there until the arrival of the regimental staff, to which he did not at that time belong. He was transferred to the regimental staff only in September of 1941, and from that time on he lived in the little Castle constantly.

Special facts which could incriminate Hodt or Bedenck can not be concluded or derived from the document which has been submitted, and such facts have not been presented here. Therefore, it is not proved that Bedenck and Hodt could be considered as perpetrators.

The following circumstances contradict the theory that Regiment 537 or any other military unit had participated in or had committed this act:

Allegedly, Polish prisoners in the three camps fell into the hands of the Germans. In that way they would have become German prisoners of war. The fact that they had been captured would have had to have been reported to the Army Group Center. Such a report did not take place, as was testified to by the witness Eichborn. Considering the tremendous number of prisoners, it is quite out of the question that a report of that nature could have not taken place inadvertently. Apart from that, the capturing of 11,000 Polish officers could, under no circumstances, have been concealed from the Army Group. As can be seen from the testimony of General Oberhauser, the Army Group never had any notice or any knowledge to this effect.

According to the statements of the two witnesses, Eichborn

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and Oberhauoser, it can be concluded that at the time of the captur of Smolensk by the Germans there could not have been any Polish officers present in these camps. Eye witnesses who could have seen the officers at this period of time were not interrogated by the Russian Commission. What he says here is that there were no eye witnesses interrogated by the Russian Commission, eye witnesses who could have testified as to the Polish officers having been in these concentration camps at that time.

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A railroad employee who was interrogated in this matter knew nothing from his own experience and observation.

Now, allegedly these 11,000 prisoners were taken from the camps to Katyn. The transport of so many Polish prisoners could not have been kept from the Russian population even if the transport had been carried on most unobtrusively and secretly, and shootings on such a large scale could not have taken place without the Russian population gaining knowledge and taking notice of them.

Even though this little forest was blocked off, at a distance of about 200 meters there was a public highway through which there was open traffic, and this highway was used daily and to a great extent by the Russian civilian populations. Anything that took place in the little forest of Katyn could be seen from this highway.

In the direct vicinity of the Dnieper Castle there were separated peasant estates, which remained occupied by the owners during the time of the German occupation, and there was constant contact with the regimental staff. There are no reliable statements and testimony dealing with either the transport or the observation of shootings. Never, even on the part of the Germans, would such a site as actually was found be chosen for the mass shooting. This site was located between the main road and the regimental quarters, and as such would have been completely unsuitable for such an act. As I have already stated, there was lively traffic on the nearby road, and there was also traffic in the direct vicinity of the graves which were near a small road connecting the regimental headquarters with the main road. Even soldiers who had not participated would have had to see any act like that if it had taken place.

For the perpetration of this deed, the selected unit would have been very unsuitable. It was a technical unit, a signal corps unit, the most unsuitable of all for such a task.

The witnesses Eichborn and Oberhaueser moved into these quarters near the site of the deed on the 20th of September 1941, and they could only give testimony from that date on. But from the end of July there was an advance unit near the castle, and from August, a regimental staff. It is quite out of the question that in the period of time of perhaps six weeks this act could have been perpetrated. The few people who were at their disposal were so overburbened with military tasks that in this short period of time it would have been quite impossible for them not only to kill 11,000 prisoners, but also

to dispose of the bodies.

According to the statement of the Prosecution, Russian prisoners of war allegdly helped with the disposal of the bodies. That cannot be proved. None of the Russian population had ever seen such prisoners. In no case could the dead be disposed of so quickly, and the site made unrecognizable so that the Witnesses Oberhaueser and Eichborn on their frequent trips to the Knieper Castle would not have seen any signs of such activity.

The testimony of the witness Baseliveski is not relevant. He allegedly heard a story to this effect from a certain Menchagin who cannot be found now. This witness did not make any personal observations. He himself did not see any Poles. He was told this by students, that they, the students, had seen Poles, but they did

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not know the number of Poles or where they were being kept. This testimony is very spotty and it seems to be worthless, and the testimony given by the two witnesses cannot be quoted in that connection.

There is one thing which cannot be overlooked in connection with the medical testimony. The German Government put out an expert report, made by 12 members of a commission who were representatives of legal medicine from European universities. However, the Prosecution refers to an expert opinion which was deposed by a group of Russian experts only. The first expert opinion, that given by the German Government, is to be preferred since it was compiled by experts who were completely impartial.

The witness Professor Markov, in his examination deviated from the statement contained in the report of the 30th of April 1943. Allegedly, he did not agree with the findings; he did not agree with the statement that the shootings took place in the months of March and April 1940, and this testimony must be met with misgivings.

THE PRESIDENT : Dr. Stahmer, you realize, of course, that you haven't offered in evidence the report of this German commission. You expressly refrained, as I understand it, from offering the report of the German Commission.

Dr. Stahmer : Mr. President, that is a mistake. I did not refrain from doing so. Rather, I was not granted the submission of the White Book, but I was granted that the submission of the report of the 30th of April 1943. However, I could not submit it immediately for it was contained in the White Book and I was to have copies made. These copies are being made, Mr.President, and they will be submitted. I used some of the passages from the protocol, from the records, with the express approval of the High Tribunal.

THE PRESIDENT : I know you did, and of course if you want to offer it there will be no objection to your offering it, but certainly I understood that you were only offering in evidence the parts of which you read to the witness. That, I think, was put to you at the time you were cross examining the witnesses on behalf of the Prosecution.

That is what I understood, but if you say that your interpretation was different and that you want to offer the whole of the report, then that matter will be considered by the Tribunal if the Tribunal hasn't already considered it.

Are you saying that the Tribunal has already allowed the whole of that report to be offered in evidence ?

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DR. STAHMER : Mr. President --

THE PRESIDENT : Dr. Stahmer, what you are desiring to offer in evidence is the conclusion of the report or the protocol or whatever it is called, is that right ?

DR. STAHMER : Yes.

THE PRESIDENT : That, I take it, isn't a very long document, is it ?

DR. STAHMER : No, Mr. President. I am sorry but I have not received the minutes of the session. Therefore, I do not know just what is contained in this protocol, but I do recall -- and one of my colleagues confirmed this to me just now -- at that time I was permitted to submit the entire so-called report of the commission and I quoted certain passages, and with the permission of the High Tribunal I reserved the right to use the entire report and submit it later.

THE PRESIDENT : Well, I don't know what you mean by the whole report, or what you mean by the protocol.

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DR. STAHMER: Mr. President, if I may repeat once more, this was a rather comprehensive protocol in which the findings of the investigations were set out. The entire course of the proceedings were set down and it concluded with a general expert opinion. Facts are described at length and set forth at length are the various factors and pieces of evidence; matters as viewed by the experts on the spot; the fact that they interrogated the Russian population; that they checked over the site on the spot and all of these things were presented by me with the permission of the High Tribunal.

Mr. President, may I be permitted to make one more remark to clarify these matters? I remember this incident very specifically for this reason; that you, Mr. President, suggested and asked whether I had another copy of this protocol. I said, "No, I have only the 'White Book.'"

Then this was submitted to the witness and thereupon I suggested that the other witness be called in so that I could have a copy made of this protocol. Mr. President, you thereupon said, no, I should take the book back and then afterwards for me to submit a copy.

THE PRESIDENT: Well, the Tribunal will look at the record to see exactly what happened.

DR. STAHMER: Mr. President, I have not seen the protocol myself, I do not know, therefore, just what it contains and if it is not set down that way then the protocol does not seem to be complete. However, I do remember the fact quite clearly that events did take that course.

THE PRESIDENT: We will continue then.

DR. STAHMER: The statement of the witness should be subject to doubt for the witness did not give any explanation for the fact that he took the attitude he did about the protocol of 30 April, 1943; that he did not contradict or oppose it; that he did not refuse to sign it and that he did not, at a later time, consult the other experts and tell them how he felt.

Through this testimony the German expert opinion cannot be torn down, especially since the other eleven experts agreed and

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endorsed the statements set forth in this report.

Because of this state of events it does not seem to be necessary to set forth the individual reasons which speak for the correctness of the statements contained in the German "White Book" of April 30, 1943.

The time fixed by the Russian experts dealing with the shooting, that is in the fall of 1941, is arbitrarily set down and it cannot be true in any case for the corpses were winter clothing, as the witness Markov noticed on the corpses upon which he performed an autopsy. The fact that shells and pistols of German make were found does not permit us to conclude that this shooting was carried out by Germans. In the German "White Book" it has already been pointed out that the German plant which produced this ammunition exported considerably and especially to the east.

In conclusion, it can be said the task of this proceeding is solely to determine whether the 11,000 Polish officers were shot after the capture of Smolensk by the Germans so that this deed could only have been committed by the Germans. The Prosecution did not succeed in proving this fact and therefore this accusation will have to be striken from the charges.

Mr. President, now I shall turn to my conclusion. I shall turn to my last few concluding remarks. I imagine it would take me roughly a little more than ten minutes, Mr. President, and I rather think it would be suitable for me to finish this all at once, that I either finish my entire conclusion or if I may be permitted, to make a suggestion that we recess now.

Shall I continue now?

THE PRESIDENT: If you can finish in ten minutes we will go on until you finish, Dr. Stahmer.

DR. STAHMER: It may take me a little more than ten minutes, Mr. President. I should like to point out that I would not like to interrupt my concluding remarks.

THE PRESIDENT: Perhaps if it would be more convenient to you -- we will do whichever you like, we will recess now, if you

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like. It is a very hot day and we will recess now if you prefer.

DR. STAHMER: I would prefer to have the recess now for the heat is bothering me a little bit today, Mr. President.

THE PRESIDENT: Very well.

(A recess was taken until 1400.)

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AFTERNOON SESSION

(The hearing reconvened at 14 00 hours, 5 July 1946.)

DR. STAHMER: I shall continue now with the conclusion.

If we now review the personality and life of the defendant Goering, the following viewpoints must be considered for the appreciation of his actions:

Of good educational and character background he received his decisive impressions as a young officer and combat airman during World War I, during which he proved an outstanding man and was awarded the highest award for bravery, the order of "Pour le merite". He experienced the collapse of the German war effort as -- as it was seen by him -- a consequence of German treachery from within.

After the rule of the Kaiser had been overthrown, the German people wanted to give themselves a new constitution on a democratic basis and then hoped to be able to work their way up again by industry and perseverance. In this, the confidence in the far-sightedness of the victorious powers of that time, especially in the fourteen points of Wilson, played a great part.

But when the treaty of Versailles utterly frustrated these hopes, the Weimar democracy came into a serious crisis from which it was not to recover. This, together with the subsequent world economic crisis, formed the prerequisite which could not be ignored for the fact that Hitler was able to seize power.

At first, the "fight against Versailles" made his rise as a party leader possible. Goering as witness described how he agreed with Hitler during their first meeting in the conviction that nothing could be achieved by paper protests.

The powerlessness of the German democracy had now become apparent to the entire world. Goering as well as Hitler were convinced that Germany inevitably would become a victim of Bolshevism if it was not possible to awaken against the latter sufficient defensive strength by the reestablishment of German self-confidence at home. It was understood that they also had to stand up with rigour against the Versailles powers. But in this, Hitler started out without question from the fact that Germany belong basically to the West, culturally, economically and even politically. He

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He believed that the Bolshevist danger, at first directed against Germany, would afterwards also threaten the Western countries. He, therefore, was of the opinion that he would be able gradually to gain their recognition and support if he took up the ideological struggle against the East.

From this basic attitude alone is it possible to explain his entire policy until the actual collapse. One may today rightly condemn it as having failed from the beginning; one must not forget that, at first, many things in the development clearly seemed to justify it. Thus it can be explained how Hitler succeeded in winning over an increasing part of the Germans to his following.

Goering sincerely believed that salvation could come only through Hitler He recognized in him the born national leader who understood how to influence the masses and to guide them and who, driven by a fascinating, strong will, could not be frightened by any obstacle. He realized that under a democratic constitution only such a man of certainly demoniacal-demagogic talent could survive. And therefore he joined him.

Because Goering was an honest German, inspired only by love for his fatherland, he did not think of using Hitler only as a tool for his own new rise to power. He rather took it upon himself from the beginning to recognize in him the only man vested with authority -- the "Fuehrer" -- and to be satisfied with a subordinate role. He, the famous air force captain and bearer of "pour le merite", did not hesitate to swear the oath of allegiance to Hitler, then still an unknown man, an oath which was to be valid for his entire life and was valid.

It is tragic that a fight which Goering waged together with Hitler, could be so completely misunderstood as to lead to the accusation against him of a conspiracy, entered into from the beginning for the purpose of committing crimes.

His aim was at first directed to freeing Germany from the shackles of the treaty of Versailles. Although the Weimar government had made repeated attempts to achieve a liberation from the especially burdening obligations of this treaty, Germany was not successful in her endeavors for a revision.

One made no progress by negotiations.

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Did not international law appear to be an instrument in the hands of the victors of Versailles to keep Germany down permanently? Was it not true in the world that might went before right, and would the Germans achieve something only when they got up the courage to hit on the table forcibly with their fists?

Such considerations appear absolutely understandable from the situation of that time. To construe from them a proof for the conspiracy alleged by the Prosecution, would mean a complete misunderstanding. Actually, the development after 1933 appears to justify Hitler completely. He easily achieved with his methods much more than what - if given freely - would have kept the Weimar government in power.

The German people could only recognize, in the willingness of the foreign countries not only to conclude treaties with Hitler - such as the naval agreement of 1935 and the Munich pact of September 1938 - but also the willingness to participate in the party rallies to the end, the fact that Hitler had chosen the correct road for reaching international understanding.

The impression and this judgment were also absolutely correct until the fall of 1938. If Hitler would afterwards have observed loyally the Munich agreement, then he would probably have taken the arguments out of the hand of the "stop" policy carried out against him. Not only would the peace have been kept, but Hitler could also have harvested the fruits of his domestic and foreign policy, carried out until then and recognized by all powers.

Basically, one argues today only whether the developments since then with their catastrophic consequences are to be charged solely to him, or who has to share the responsibility. All Germans who followed Hitler at any time and in any way, are accused. For, it is said by the Prosecution, above all of those who did not trust him from the beginning for anything good and who denied the legality of his government from the beginning -- "It could be seen from the beginning that it would and as it did!" Thus, everyone who supported him at any time and in any way, is therefore also guilty.

This accusation must be objected to because, looking backwards from this

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sad result it constructs an obligation which must annihilate all belief not only in freedom, but also in the insight of man. Naturally Hitler did not desire the end as it happened. He often enough announced publicly that he was not out for the laurels of war, but that he would like to devote the rest of his life to peaceful reconstruction.

From a truly objective point of view, one can say only that he did not limit his goals when he could no longer believe in their achievement by peaceful and humane means.

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If under such means only those are understood which are to renounce force generally in any form, then he need not have gone his own way and have looked for a new solution. A certain play with force, as long as it does not degenerate, will therefore have to be left at his disposal. Where the degeneration began -- because of the lack of other points of reference -- can only be surmised from the results which he actually caused with his policy. Most certainly he did not foresee and intend the bad results. However, it wil have to be considered as his guilt that he would never let himself be taught by his failures, but only let himself be led to increasingly exorbitant acts. How much of this guilt, however, can and may be charged also to his followers?

Whoever did not reject Hitler's methods, and thereby him personally, from the very beginning as illegitimate, found difficulty in recognizing where Hitler's political aims came to an end, to give justifying reasons for his measures, and where afterwards his politics became a crime. In this respect the border, from the standpoint of purely German law sentiments, surely ran along a line considerably different from that of other nations or mankind. The latter, for example, were hardly interested in the maintenance of the Weimar Constitution and the basic rights granted by it to the individual German. Its violation therefore, up to the Second World War, has never caused other states to intervene with the German Government. On the other hand, once the war had broken out, the Germans were forced to give precedence to German interests over their sympathy with members of other, especially enemy, states. Each of them believed to be doing enough if he took care, in his field, that unnecessary hardships were avoided. To rebel against orders which came from the highest German command would not only have appeared completely senseless and hopeless, but, until shortly, until the bitter end, it would also have been a violation of German legality and thereby a criminal injustice. Accusations that no rebellion was undertaken can therefore be raised only if the breabh of formal legality, without consideration of the immediate practical effect, and only on behalf of the principle -- ergo the attitude of a revolutionary -- could be defined as a legal obligation.

The consequences of such a conception are so far from the point that they cannot be mentioned seriously at all because the hitherto existing international law was primarily based on the unlimited sovereignty of the

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states. No state is willing to submit vital decisive questions to the judgment of other, however great a majority it may be or however independent a tribunal. And now every individual citizen of such a soveriegn state was supposed to have not only the right in relation to the other nations or humanity, but even the duty to rebel against the legal power machine of his own state, because the latter violated human rights and the rights of humanity. Such an imposition, amde retroactively, pronounces its own sentence. It would place the autonomy of the individual above state sovereignty. Thereby the strength of the individual person would not only be immeasurably overestimated, but this would have to lead to the broaking of the last ties of traditional order, to anarchy. Compared to such a man of thinking „oering almost represents the exact opposite pole. As others went into the war in order to fight war as such, so he became a revolutionary in order to restore honor to the concept of loyalty. Thus, having once cast his lot with the Fuehrer, he stood by his side even after he had already lost the latter's confidence for a long time; yes, even after he had been sentenced to death by Hitler. He remained loyal until today, in spite of everything by excusing Hitler before himself, repeatedly. To many this may appear incomprehensible, and many may see more

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weakness than strength in it. In this loyalty, however, the man reveals his whole nature, Goering has been described in the press as a late Renaissance type; and there is something in this. Although of high intelligence, he allowed himself to be guided in his actions less by considerations of common-sense than by the feelings of his impetuous heart.

Such a man expresses himself of necessity in a way that is primarily subjective. He not only sees his surroundings and other people impassionately as immovable quantities he has to reckon with, but he, rather and above all, is sensitive to the effect they have on him and how they call for his approval or disapproval, so that he finally makes his personal reaction to them the basis of his judgment as a whole.

In this, as can be seen from the statements of the General Supreme Staff Judge Dr. Lehmann, he always showed himself at pains to remain just and to lend an ear to considerations of sentiment. He always kept himself free from doctrinal prejudices. As a soldier, he always endeavored to hit on the right factor in the individual case. His judicial decisions and his social attitude, which General Bodenschatz testified to amongst other things, show his serious moral feeling of responsibility. His attitude towards all criminal acts directed against the honor of women are proof of his chivalry. But he takes no dogmas for his standards in this, only the spontaneous judgment of his feelings, not only intellect, therefore, but life. From this, he derives his ideas and the values which determine his actions.

Therefore, the Fuehrer and the oath of loyalty he had taken to him meant everything to him and was the substance of his life. Ambassador Henderson had already judged Goering correctly, when he wrote about him:

He was the perfect servant of his master, and I have never seen greater loyalty and devotion than he maintains toward Hitler. He was recognized as the second power in the country, and always gave me to understand that he was Hitler's natural successor as

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leader. Men in secondary places often tend to emphasize their own importance. In all the open discussions in which I engaged with Goering, he never spoke of himself or the great part which he had played in the Nazi revolution; Hitler had done everything, all confidence was confidence in Hitler, every decision was Hitler! and he himself was nothing."

This judgment still applies today. But his loyalty became his disaster, and the world, for him, sank into ruins. He certainly recognized many a mistake of the past, but he never showed the regret, which many would like to see with him. He thereby remains true to himself, as well. With this the picture of his character ends.

In a period which is still threatened by chaos and which is again searching for a firm foundation for life, the positive value of such loyalty too should not be ignored.

THE PRESIDENT: Dr. Seidl, I understand that you have not had your speech translated into any of the languages. Is that so?

DR. SEIDL: Mr. President, yesterday I told the General Secretary the reasons which made it impossible to have the speech translated. However, I have given the interpreters the text in German, and I was told that the German text is a big help to them in making the translation as quickly and as accurately as possible.

THE PRESIDENT: Well, the Tribunal has already pointed out to you, many days ago, that it is very inconvenient to them not to have a copy of the speech before them. If you propose to make a speech, they will do the best they can to appreciate it. It makes it very much more difficult and very much more inconvenient not to have the speech translated.

DR. SEIDL: I shall have the translation made as quickly as possible for the case of the defendant Funk.

THE PRESIDENT: Very well; go on.

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DR SEIDL: Mr. President, and Judges, when in 1918 the German Army, after more than four years of heroic struggle, laid down its arms, this was done in confidence in the assurances of President Wilson which he had repeatedly given in 1918. In the victory speech of 8 January 1918, the President of the United States of America, in 14 points, had demanded among other things open --

THE PRESIDENT: Dr. Seidl, the Tribunal has already intimated, as you must know, that the question of the 14 points, and the question of the justice of the Treaty of Versailles, is irrelevant. They do not propose to listen to it. You have been told that before, and many documents have been rejected which dealt with this subject.

DR. SEIDL: Mr. President, I do not intend to comment on the question of whether the Versailles Treaty is just or not. The point is this. The prosecution submitted the Versailles Treaty in evidence. They left the Versailles Treaty the main point of the indictment as far as Point 1 is concerned.

My investigation aims at the following: First, was the Versailles Treaty formed legally? Second, --

THE PRESIDENT (Interposing): I spoke only of the injustice of the Versailles Treaty. But it is even more irrelevant to question whether the Versailles Treaty is a legal document or not. We do not propose to listen to your contending that the Versailles Treaty is not a legal document. There are plenty of matters which are of material moment for your client which you have to discuss before us, and that is not one of them.

DR. SEIDL: Mr. President, I cannot leave the Court in the dark on the fact that the Versailles Treaty and its consequences, especially the original connection between the seizure of power by National Socialism as a result of the consequences of the Versailles Treaty are a considerable part of my speech.

THE PRESIDENT: Dr. Seidl, I have told you that the Tribunal will not listen to your contending either that the Versailles Treaty was not a legal document or that it was in any way unjust. On those topics, we do not propose to hear you.

Dr. SEIDL: Must I understand the statement of the Court to the effect

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that I will not be permitted to speak of the consequences of the Versailles Treaty, and particularly the connection of these consequences with the rise of the National Socialist Party and with the seizure of power by Adolf Hitler and the co-defendants?

THE PRESIDENT: Look. The Versailles Treaty is, of course, an historical fact, and the Tribunal cannot prevent you from referring to it as an historical fact. But as to its justice or as to its being a legal treaty, the treaty which Germany signed, you will not be heard.

As you have not made your speech before us, we do not know what you are going to say. But we will not listen to that sort ofargument.

DR. SEIDL: Then I shall begin on Page 6 of the German manuscript, in the second paragraph.

Thus the struggle began for the revision of the peace dictates of Versailles at the moment when it was signed. In the program of the National Socialist Labor Party of Adolf Hitler, this struggle against the Versailles peace dictate and for its revision assumed a pleace far surpassing all other demands. It was the leading forts from which the whole inner political activity of the Party developed, and which, after the seizure of power, was to form the basis for all foreign political considerations and decisions.

One of the first fellow-fighters of Adolf Hitler was the defendant Rudolf Hess. Like Hitler, he, Rudolf Hess, was also a front-line soldier in the First World War. As a volunteer, he joined at the outbreak of the war, and until he was wounded in Rumania, he had risen to lieutenant of infantry. When this wound made further service with the infantry impossible, he reported to the air corps.

After the armistice, he took part in various volunteer fighting, and in 1919, after the conclusion of the Versailles Peace Treaty, he had to recognize that the victors had not wanted a peace of justice and the adjustment of interests, for, as could not be expected otherwise, the peace conditions of Versailles, and especially the burden of the reparations, had to have a devastating effect.

THE PRESIDENT: Dr. Seidl, it may be difficult for you to cut out of your speech the various references to the topics which I have referred to, but you must kindly try to do it. For if you continue to refer to the topics

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to which I have referred, namely the justice or the legality of theTreaty of Versailles, the Tribunal will have to stop your speech and go on with some of the other defendants.

DR. SEIDL: Mr. President, what I was speaking of just now is not a matter of justice or legality, but it is a question of the consequences, and refers to an investigation of the original connection. If the Prosecution, in weeks of presenting evidence, showed how the rise of the National Socialist Party came about, and how the numbers of it s mandates increased--

THE PRESIDENT (Interposing): Dr. Seidl, th ose are all facts which the prosecution is perfectly entitled to prove. What you are now referring to is an argument that certain clauses of the Versailles Treaty were unjust. And that is an argument which the Tribunal is not prepared to listen to. It is not a statement of fact; it is an argument.

DR. SEIDL: Of course, it is an argument.

THE PRESIDENT: I have said that it is an argument we are not going to listen to. If you do not understand what I mean, you will have to stop continuing your speech. Do you understand that?

DR. SEIDL: Page 8, then.

When in 1925, the Party was founded anew, Rudolf Hess was once more one of the first --

It is impossible, Mr. President, to continue my speech, because all the following statements are concerned with the question of what the defendant Hess did up to the seizure of power, and I must say that the essential part of his activity was to work within the Party and among the German people towards a revision of the Versailles Treaty and its most unbearable terms. This is the question of the whole National Socialist movement to 1933.

THE PRESIDENT: If you confine yourself to statements of fact as to what the defendant Hess did, there will be no objection to it at all. But as I said, if you make arguments that the Treaty of Versailles is illegal or unjust, the Tribunal will not hear you.

DR. SEIDL: I shall continue. And I ask the President, sinceI do not know the limit exactly, to interrupt me if I should choose a subject which refers to --

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THE PRESIDENT (Interposing): Dr. Seidl, you know perfectly will the limits which have been laid down by the Tribunal many weeks ago as to the question of the justice or the injustice of the Treaty of Versailles. There has been a great number of documents rejected on the ground that they dealt with the justice or theinjustice of the Treaty of Versailles, and you must have known that perfectly well.

DR. SEIDL: Then I ask the Court to tell me whether I am permitted to make statements to the effec t that the economic conditions, especially the great unemployment, resulted from the reparatinn terms of the Versailles Treaty and the refusal of the victorious powers of 1919 to change the policy or reparations accordingly.

THE PRESIDENT: You may certainly state what the condition of Germany was. That is a matter of fact.

DR. SEIDL: Then I shall begin on Page 8.

When in 1925 the Party was founded anew--

THE PRESIDENT: (Interposing) Dr. Seidl, the Tribunal is perfectly familiar with this type of argument; I mean, we are not going to lose sight of the argument. We know all about the argument; we do not want to hear it. We think it is entirely irrelevant.

Can't you go on to other passages of your speech which are important for the defendant Hess? As I have said, there are a great many matters which have been proved by the prosecution and which have been answered by the defense; and upon those matters we desire to hear you.

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DR. SEIDL: I shall begin on page ten, with the second paragraph. Therefore, in the Reichstag elections of the 14th of September 1930, the National Socialist Party achieved a great election victory and entered the new Reichstag with no less than one hundred and seven delegates. That is in part and the result of the economic crisis of the time --- the great unemployment and thus, indirectly also of the adjustment of reparations contrary to all common sense by the Versailles Treaty and the refusal of the victorious States, in spite, of urgent warnings to improve the readjustments. It is ture ---

THE PRESIDENT: Dr. Seidl, you know that is again an argumentative statement, that the Treaty of Versailles was unfair and that the victorious powers had failed to recognize the essential justice of Germany's case or something of that sort. If you can't adjust your speech to what I have laid down, we shall have to ask you to recast the whole speech.

DR. SEIDL: Then I shall go over to page 11, second paragraph. I shall go to page 12. We, the German people, in referring to the Peace Treaty of Versailles had disarmed and they could expect with justification that the victorious powers would also ---

THE PRESIDENT: One moment, Dr. Seidl. Dr. Seidl, as you don't appear to be capable of recasting your speech as you go along to accord to the Tribunal's ruling, the Tribunal will not hear you further at this stage. It will go on with the next defendant's case. You will then have the opportunity of recasting your speech and you will submit your speech for translation before it is presented and I would explain that this is the reason why the Tribunal does not propose to hear you upon these matters. They are irrelevant to the issues that the Tribunal has to try. If they were in any way relevant to the charges which are made against the defendant in the Indictment, they would of course hear them but they are, in the considered opinion of the Tribunal in no way relevant to the charges upon which the defendants are being tried and therefore the Tribunal do not propose to hear them. The justice of the Treaty of Versailles has nothing to do with whether or not the war which was made by Geramny was aggressive. It has nothing to do with the war crimes with which the defendants are charged and therefore it is irrelevant and for that reason we don't propose to hear it. Now, as I say, as you

are unable apparently to recast your speech, you will be given an opportunity of recasting it in private and you will then submit it for translation and you can then deliver it; and now we will go on with the case against the defendant Ribbentrop.

DR. HORN: Mr. President, I have just heard that the translations are being brought up. Perhaps I may wait until the translation gets here ?

THE PRESIDENT: I think you might go on. We can hear what you say and take it down.

DR. HORN: Yes, sir. Mr. President and Judges :

" All great upheavals of history of the world and especially in modern Europe have at the same time been wars and revolutions."

We are standing in the midst of such a upheaval. It absolutely is not concluded as yet. To selec single events in order to render judicial judgment is not only almost impossible, but entails the danger of too early a verdict. Make no mistake about it:

Here we do not judge a local crisis whose causes are limited to a certain part of Europe. We have to form a judgment about a catastrophe which touches the deepest roots of our civilisation.

The prosecution has laid down strict measures in judging certain national and international events. Germany is much interested in the development of the idea of the law if its use leads to a betterment of international morals. This court has the high task, not only to decide about certain defendants, and uncover the causes of the present catastrophe, but at the same time it will create norms which are expected to be adopted universally. No law should be created that is only applied to the weak. Otherwise we should risk the danger that again all political efforts are directed toward ability for total resistance and thereby make war still more pitiless than the one about which judgment is to be rendered here.

In reference to these basic thoughts I beg to present to the Tribunal the case which I represent.

H. von Ribbentrop is being considered among the conspirators as the man mainly responsible for the foreign policy and diplomatic side of an alleged

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conspiracy, which is supposed to have had as its goal the preparation and execution of aggressive wars. It is my task to find out from the evidence when an attack in the meaning of international law is prevalent, and in which cases aggressive wars were conducted.

The term aggression follows not only the porposed formal judicial definition by the American and British prosecutors, but has, beyond all a basis in realities.

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Only the knowledge of these premises permits the adoption of an attitude which will serve as a basis for the decision of the court. I am therefore deferring the discussion of the problematic aspects of aggression and aggressive wars till I have presented to the court the evidence for the valuation of German foreign policy and the participation in it by H. von Ribbentrop.

As the Tribunal intends to consider the matter in the light of criminal law, I shall examine especially, to what extent H. von Ribbentrop checked or promoted the decisions concerning foreign policy during the time of his political activity.

Mr. von Ribbentrop's first step into the world of the balancing of interests and therefore of the international game of power was successfully taken when he in 1935 concluded the naval agreement between Germany and England. The circumstances under which this treaty came to life are as significant for the political problems of those years as they are characteristic for judging the personality von Ribbentrop's and his further political development. This treaty - as it is known in informed quarters - came about under exclusion of the official German diplomacy. The then German Ambassador in London, von Hoesch, and the Wilhelmstrasse were very sceptical toward this project. Both Hoesch and the Wilhelmstrasse did not believe that England was inclined to concluding such a treaty, which contradicted the terms of part V of the Versailles Treaty as well as her previous attitude displayed at the different disarmament conferences. Furthermore they did not believe that such an agreement could materialize a few weeks after the Council of the League of Nations had declared the restoration of German military sovereignty as a breach of German obligations, and England, France and Italy had met at Stresa in order to counteract this German step. They did by no means believe that a successful conclusion of such a far reaching treaty with its fundamental significance could be achieved by an outsider like Mr. von Ribbentrop.

The consequences of concluding this treaty were just as significant as far reaching. The authority of Mr. von Ribbentrop who

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came from the party rose in Hitler's eyes. However, the relationship between Mr. von Ribbentrop and the conservative diplomatic corps became more and more difficult. This acting ambassador (Titularbotschafter) who had managed to acquire Hitler's confidence was distrusted because his activity could not be controlled by the Foreign Office.

From the conclusion of the naval agreement on, Hitler began to see in Mr. von Ribbentrop the man who could help him in the fulfillment of his pet wish - and, we may say, of that of the German people - to bring about a general political alliance with England. The tendency to realizing these intentions originated in real as well as ideal motives.

The real motive can be condensed into short consideration, that it is the bad luck of our nation and of all of Europe that Germany and England were never able to understand each other, in spite of serious attempts of both countries during the last 50 years.

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The ideal motives rested in Hitler's undisputable preference for many approved internal institutions of the empire.

Politically the naval agreement represented the first important break with the Versailles policy which was sanctioned by England with the final approval by France. And thus the first practically useful armament limitations were accomplished after many years of fruitless negotiations.

With all these factors a generally favourable political atmosphere was created at the same time. The naval agreement and its effects may also have been the reason for Hitler to appoint Herr von Ribbentrop Ambassador to the court of St. James the following year, after the death of Hoesch.

As surprisingly fast as Herr von Ribbentrop succeeded in concluding the naval agreement, as little success had he in offering a general alliance to England. Was it the fault of Herr von Ribbentrop's diplomacy or the basic difference of interests?

He who knows the Anglo saxon psychology knows that it is not advisable to attack these people at once with proposals and requests. If at the first moment one may, especially from the German side, recognize many mutual characteristics in the British, still on close contact one will note profound differences. Both root in a different soil. Their spiritual field is watered by various streams. The deeper the Germans and the British go, the greater will be the proof of the difference of their faith and their intellect. The deeper the British and the French penetrate into the nature of the other, the more mutual features they will find. Common political interests in the past 50 years have deepened these mutual features between the British and the French.

In the course of modern history England always had the need for an alliance with a continental military power and has searched for and found satisfaction of this interest, according to the standpoint of British aims, sometimes in Vienna sometimes in Berlin and from the beginning of the 20th century in Paris.

Even at the time of Herr von Ribbentrop's activity as an ambassador, England's interest did not require a deviation from this line. To this was added the basic British attitude that Great Britain did not wish to commit

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herself on the continent. Added to this was the fact that authoritative men in the Foreign Officethought still too much in the political terms of the end of the 19th and beginning of the 20th century, and this attitude was still, now as then, governed by leaning towards France.

The voices of those who supported a closer approach toward Germany were negligible, their political power inferior to that of the opposition. To this were added the difficulties which resulted for Herr von Ribbentrop from Germany's participation in the non-interference committee, which at that time met in London in order to keep the powers out of the Spanish civil war.

The prosecution raised the question of how Herr von Ribbentrop regarded the German-British relationship on his departure as an Ambassador from London. The answer to this will best be furnished by document RC 75, which contains the view of Herr von Ribbentrop about the then prevailing situation of Germany with regard to foreign politics and the future possibility for shaping German-British relations.

Herr von Ribbentrop presupposes that Germany does not want to be bound by the status-quo in Central Europe. He entertains the conviction that the implementation of these objectives of foreign politics will by force lead Germany and England "into different camps".

For this case he advises to strive toward a constellation of alliances, loose at first, with powers of equal interests (Italy and Japan). Through this policy he hopes to bind England at the danger points of her Empire, and still to keep open the possibility of a understanding with Germany.

Herr von Ribbentrop then turns to the question of Austria and the Sudetenland. According to his conviction then prevailing, England will not in both these questions give her consent to a modification of the status-quo but might be forced through the power of circumstances to tolerate a solution of these questions.

In view of vital French interests a change of the status-quo in the East will , however, cause England always to become an opponent of Germany in arguments of such nature. Herr von Ribbentrop upheld this interpretation not only in 1938 when this document was penned, but contrary to the assertions

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of the prosecution warned Hitler of this dsnger even before and at the outbreak of the second World War.

From this document it follows also that Herr von Ribbentrop did not, as was asserted here, represent the British toward Hitler as a degenerate nation, but he says in this document quite clearly that England would be a hard and keen opponent to the pursuance of German interests in central Europe.

These interpretations of Germany's attitude in foreign politics at that time, as expressed in TC 75, evidently agreed with Hitler's idea inasmuch as in the course of the Fritsche crisis Herr von Ribbentrop took over the foreign ministry in place of the resigning Herr von Neurath.

According to Herr von Ribbentrop's testimony, Hitler asked him upon entering his office, to assist him in solving 4 problems. These consisted in the Austrian, the Sudeten German, the Memel as well as

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the Danzig and Corridor question. As shown by the evidence this was not a secretive understanding which was arrived at by the two statesmen.

The Party program contains, in point 3, the demand for revision of the peace treaties of 1919. In a number of speeches Hitler repeatedly pointed out the necessity of fulfilling these German demands. Reich Marshal Goering testified here that, in November 1937, he explained to Lord Halifax the necessity of solving these questions and said that they were an integral part of German foreign politics. These goals he also presented openly to the French Minister Bonnet. Herr von Ribbentrop therefore gave his principle support to goals which were known and which resulted, of necessity, from the dynamics at that time prevailing in central Europe on account of the recuperation of the Reich.

How far the freedom or restriction of action of Herr von Ribbentrop as a Minister reached in the solution of these questions, I shall explain in connection with my remarks on the participation in the conspiracy of which the defendant is accused. Only this much may be said here, that, as was proven by evidence, with the dismissal of Freiherr von Neurath the concentration in Hitler's hands of the decisive authority also in the field of foreign politics had found its conclusion. Herr von Neurath was the last Foreign Minister who, at first as a Foreign Minister, had managed to maintain a decisive influence on foreign politics under the regime of National Socialism, which in time, with the increasing power of the regime, he had to surrender to Hitler's striving totality, more and more.

In Herr von Ribbentrop a man now became Foreign Minister whom Hitler had selected after his own taste.

Besides all forms of state law and jurisdiction, government without a doubt has a strong component in the purely personal relations among the rulers. Seen from this point of view, it is necessary for the understanding of certain actions and history to look into the relations between Hitler and Herr von Ribbentrop.

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Herr von Ribbentrop, as a well to do man from the nationalistic camp, saw in Hitler and in his party efforts which corresponded with his own ideas and feelings. Herr von Ribbentrop's ideas about the foreign countries visited by him aroused Hitler's interest. Hitler's personality and political convictions formed in Herr von Ribbentrop a form of loyalty, the final explanation of which one can perhaps find in the effects of the power of suggestion and hypnosis.

We do not wish to conceal that not only Herr von Ribbentrop but also an enormous number of people on this side as well as on the other side of the border fell victim to this power.

What is in this court-room to be conceived in the forms of law, will find its final explanation only from the point of view of the effect on the masses and in the psycholoty, to say nothing of the pathological form of these phenomena. This task may be left to the sciences concerned.

As an attorney - and only as such do I have to evaluate the results of the evidence - I may, with the permission of the tribunal, present, after clarifying these facts, the role of Herr von Ribbentrop within the alleged conspiracy for the plotting of wars and acts of aggression with breach of contracts.

Herr von Ribbentrop had not yet been Foreign Minister for 10 days when he was called upon by Hitler to participate in the conference with the Austrian Bundeskanzler and his Foreign Minister on 12 and 13 February 1938 in Berchtesgaden. Evidence presented in court has confirmed the fact that questions especially involving Austria were exclusively within the domain of Hitler. The then Ambassador von Papen reported directly to the Head of the State. Herr von Ribbentrop had no influence whatever upon activities of the party in Austria as well as in the southeastern territory. My client alleges to have been informed only rarely and not officially about its activities there.

The former Austrian Foreign Minister Dr. Guido Schmitt deposed that Herr von Ribbentrop did not participate in the decisive conference between Hitler and Schuschnigg. During the rest of

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the conference he did not conduct himself in the Hitlerian style and created the impression of not being informed on the subject, which was probably due to his late activity in London and his being appointed Foreign Minister only recently. From this unobjectionable conduct of v. Ribbentrop the prosecution has deduced that Hitler and Ribbentrop had agreed upon a premeditated manouver. It sees in H. v. Ribbentrop's conduct that which is typically characterised as "double talk". Must not the undisputable data and facts as regards H. v. Ribbentrop, the impression of the witness Schmidt, hence resulting, my portrayal of Ribbentrop's position as minister, his lack of information on the long planned preparations with respect to Norway and Denmark, and other undeniably proved facts, raise the question whether H.v. Ribbentrop participated in decisions of foreign policy to a far lesser degree than is contended by the prosecution?

The hearing of evidence proves conclusively that, at least as far as Austria's annexation is concerned, he played no important part. For him Austria remained a country mutilated by "St. Germain", a country which, according to healthy principles could hardly exist and which once shared a common destiny in history with Greater Germany. The National Socialists were not the first to awaken Austria to the thought of a union with Germany. This thought had ripened, in the German element of the Hapsburg Monarchy since the revolution of 1848 aimed at a democratic and Greater Germany. It was fought for by the Social-Democrats for ideological and realistic reasons after the downfall of this Monarchy. It was this very democracy that saw in the Weimar state their spiritual offspring. The economic distress resulting from the destruction of the Danube area as an economic entity nurtured the thought of a union with the Reich, which was economically better off.

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The National Socialists were in a position to utilize this fostering soil. In any event, presuppositions for a union with Germany existed, when assistance of Austria by Italy ceased, through closer relations of the former towards Germany by reason of the Abyssinian conflict. Further reasons that contributed to and justified the union will be specifically stated by my colleague Dr. Steinbauer.

Reichsmarschall Goering testified here that, as interpreted in the narrow sense of the law of reunion of 13 March 1938, which was signed also by H. V. Ribbentrop, the union did not even correspond with the intentions of Hitler but was put through by him.

As further violation of treaties the prosecution denotes the violation of Article 80 of the Treaty of Versailles and the corresponding article of the Treaty of St. Germain as well as the violation of the treaty between Austria and Germany of 11 July 193

THE PRESIDENT: The translation came through to me, I think, as though you had said,"...the union did not even correspon with the intentions of Hitler, but was arrived at" -- it should have been "by Goering himself".

DR. HORN: Yes.

THE PRESIDENT: Go on.

DR. HORN: In justification of these violations one could point out that the provisions concerned constitute a violation of the basic right of self-determination. The outcome of the vote after the annexation at any rate clearly confirms the Austrian attitude of that time.

The clausula rebus sic stantibus could be considered as a further justification of violation. One could refer to the statement of Under Secretary Butler in the House of Commons who, upon questioning after the union asserted that England had given no special guarantee for the independence of Austria as undertaken in the Treaty of St. Germain.

These judicial evaluations would hardly do justice to the

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facts. Positive law always lags behind the ideal state of justice Such is the case not only in laws governing internal relations but also in International Law.

Events show that if, in the drawing up of treaties, no provisions are contained for change of circumstances, history shatters them by revolution in order to rebuild them upon a new base.

Whether participation in such events can be legally evaluated is questionable. To general principles of the adaptability of justice to the might of facts I shall refer later on.

An Englishman asserted:

"We have to face the stubborn fact that Central Europe is populated by an almost solid block of 80 million people who are highly gifted, highly organized and who are conscious of these achievements in the highest degree. The majority of these people have the strong and evidently unexterminable desire to be united in one state".

This artifically split up block, created by the Peace Treaty of 1919 was put in motion by the annexation of Austria and the racial theories of National Socialism. No attentive observer could fail to notice the effect of the annexation upon the neighboring states.

It is not my intention to take up the time of the Tribunal with the particulars of the then proceeding efforts by the various groups of Germans in the neighboring states for incorporation into the Reich. The facts which have now become history are only too well known. My task here is to examine whether these events are the results of a premeditated plan of an individual person or of a group of persons, or whether a long and artificially stored up force assisted in accomplishing the objectives which were assigned to Herr von Ribbentrop by Hitler at the time of his appointment.

The Anschluss of Austria was the signal for the Sudeten German Party to force the Anschluss now on their part too.

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Herr von Ribbentrop had been accused by the prosecution that in his capacity as Foreign Minister he engaged in the creating of difficulties under the Sudeten German Henlein. It further accuses him of having induced the Sudeten German Party to increase their demands step by step instead of entering the Czeckoslovak government, and in that way of having prevented a solution of the whole problem without having made the German Government appear as pace maker.

Document 3060 PS submitted by the prosecution shows just the contrary. It is true that Herr von Ribbentrop knew that the Anschluss efforts of the Sudeten Germans received help from the party, but he had no influence on this party policy nor any thorough knowledge of it. With regard to the difficulties which had arisen with the Czech Government caused by the separation efforts of the Sudeten Germans and their partly uncontrollable policy, Herr von Ribbentrop found it necessary to take care of the realization of the Sudeten German aims within the limits of a responsible policy.

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There was at first a short calming down of the foreign situation throu the Munich Pact. It was complicated again only through the visit of Hacha in Berlin and the concomitant events, a step of Hitler's which was in this far reaching form completely surprisong to herr von Ribbentrop .

As Reichsmarschal Goering has testified, Hitler, after the solution of Slowakia in spite of all warnings, decided upon setting up the Protectorate of Bohemia and Moravia. On the basis of the available material it migh be difficult to ascertain the final reasons for Hitler's step. According to the testimony of the defendant Goering they sprang from Hitler's lasting fear that through an alliance of the Czech officer corps with Russia the situation in the Southeastern Territory could be complicated again. This and the esulting strategical and historical reasons might have induced Hitler to this step of 13 March 1939, which came as a surprise also to Herr v. Ribbentrop.

This decision, which is only understandable by Hitler's inclination for surprising decisions, brought a complete change in the German foreign policy.

Herr von. Ribbentrop had at that time, with a warning, demonstrated to Hitler the reaction of the Western powers, especially of England, which had to be expected as a result of this step.

The results manifested themselves immediately in the Danzig and Corrid question which had been discussed since October 1938. Whereas up to that time the Poles, because of the German policy since 1934, and the return of t Olsa territory did not refuse discussions about this problem, the reaction to the setting up of the protectorate could be seen immediately at the end of March. England regarded the establishing of the protectorate as a violation of the Munich Pact and began consultations with a number of countries. At the same time Minister Beck, instead of coming once more to Berlin, went to London and returned from there with the assurance that England would resi any change of the status quo in the East. This declaration was also given in the House of Commons after previous consultation with the French Government.

On 26 March 1939 the Polish Ambassador Lipsky called at the Wilhelmstrasse and stated to Herr v. Ribbentrop that any continuation of the revision policy towards Poland, especially as they are concerned with a return of Danzig to the Reich would mean war.

This made the Polish question into an European one. Mr. v. Ribbentrop told the Polish Ambassador at that time that Germany could not be satisifed with this decision.

Only a clear return of Danzig and an exterritorial connection with East Prussia could brin a final solution.

I submitted to the Tribunal in the form of documentary evidence a revie of the now beginning course of the Polish crisis. I can therefore assume that the actual course of events is known, also inasmuch as they are connected with the annexation of the Memelland which was returned to the Reich through an agreement with Lithuania.

In order not to take up the time of the Tribunal unnecessarily, I shall confine myself to the pointing out of the facts which are apt to clear the role of H. v. Ribbentrop.

The prosecution accuses Mr. v. Ribbentrop that during the Sudeten crisis and the setting up of the Protectorate of Bohemia and Moravia, he had lulled Poland by pretending friendly feelings. May I, in contradiction of this assertion, point out that the relations between Germany and Poland since the agreement of 1934 were good and even firendly, and that this attitude became of course, even more favorable through the fact that Poland owed the acquisition of the Olsa territory to the German Foreign policy.

She had therefore every reason to harbor friendly feelings towards Germany without the necessity of a deceitful conduct on the part of Mr. v. Ribbentrop. As the evidence has shown, Mr. v. Ribbentrop continued this friendly policy towards Poland even after the dissolution of Czechoslovakia as there was no reason to deviate from this attitude.

The prosecution further accuses Mr. v. Ribbentrop of having known that Hitler had already in spring 1939

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been resolved to start a war against Poland and that Danzig served only as pretext for this conflict. It deduces this from the documents US 27 and US 30. They deal with the well known speeches by Hitler on 23 May and 22 August 1939.

May I point out in the first place that Mr. von Ribbentrop was not present at these conferences which were only for military personnel.

A number of key documents have been discussed in detail here. I only wish to name the best known, such as the Hossbach document, the two Schmundt files and the afore mentioned speeches. Quite a number of interpretations of these documents have been the subject of the testimony. People who knew Hitler stated that they were used to extravagant ideas from him in the form of sometimes repeating and surprising speeches and that in consideration of his peculiarities they did not take them seriously.

One can present in contrast to these documents quite a number of speeches in which Hitler asserted the contrary. One can object to that by saying that Hitler had always connected a certain purpose with his utterances. That is certainly true. But it is also true that even the few key documents, submitted as proof of the aggressive war, contain so many contradictions with regard the aggressive intentions deduced from them, that perhaps a critic judging retrospectively could recognize such intentions in accordance with the strict regulation for secrecy; the content of these documents were for that matter only known to those who took part in the conferences. This makes it clear why Herr v. Ribbentrop learned to know about them only here in the Courtroom.

The instructions concerning foreign policies which Hitler gave him at that time dealt solely with the re-incorporation of Danzig and the establishment of an extraterritorial road through the Corridor, in order to have a direct land-route to East Prussia. As the Court may remember, the desirability of realizing these aims had already been mentioned by Hitler when he appointed Herr von Ribbentrop as Foreign Minister. This demand was historically just as justified, as the solution of the preceeding incorporation of areas which were inhabited by Germans became inevitable in this case.

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The status of the purely German city of Danzig, which had been determined by the Treaty of Versailles in the course of the erection of a Polish state, had always been the cause of frictions between Germany and Poland. Poland had effected this solution at Versailles on the basis that it needed an outlet to the sea. For the same reason, yet against all ethnological needs, the Corridor was established. Already Clemenceau in his memorandum pointed to this artificial creation as a source of danger, especially due to the fac that the people united in this area had been separated through long years of bitter enemity. It was not difficult to foresee that, as result of this fact, the League of Nations and the International Court at the Hague would be occupied not only with current complaints against violations of the Agreement for Minorities. The same cause gave rise to confiscation of German real estate on the largest scale up to 1 million hectars and the expulsion of far more than 1 million Germans in the course of 20 years. Not without reason had Lord d'Abernon speak of the Danzig-Corridor problem as of the "powder-barrel of Europe". If then efforts were made to solve this question, recognizing the Polish right for maintaining on outlet to the sea, such efforts were fustified from the standpoint of history and common sense.

The evidence showed no basis whatever for the assumption that this question served as a pretense only of which Herr von Ribbentrop must have been aware. No evidence has been produced that Herr von Ribbentrop was acquainted with Hitler's aims, which far exceeded these demands. Just as little has it been proved that Herr von Ribbentrop before 1 September 1939, as has also been asserted by the Prosecution, did all he possibly could to avoid peace with Poland, although he knew that a war with Poland would draw Great Britain and France into the conflict. The Prosecution bases this statement on document TC 73. This involves a report of Lipski, the Polish Ambassador in Berlin, to his Foreign Minister. The document contains nothing whatsoever to substantiate this assertion.

Moreover, I do not believe, that according to the result of the evidenc Lipski can be counted as classical witness. May I recall that it was Lipski who, during the decisive stage of negotiations before the outbreak of the war remarked that he had not the least cause to be interested in notes or propositions from the German side. After a period of 5 ½ years as ambassador

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in Germany, he was very well acquainted with conditions there. He was convinced that in case of war unrest would break out in Germany and that the Polish Army would march into Berlin victoriously.

According to the testimony of the witness Dahlerus it was exactly Lipski, who during the decisive discussion at the Polish Embassy, created the impression with the Swedes that Poland was sabotaging every possibility for negotiations.

Further results of the evidence also speak against the above allegations presented by the Prosecution. So for instance the fact, that Herr Von Ribbentrop knowing that the Polish - English Guarantee Pact had been signed, by his intervention with Hitler caused the latter to recall the marching-orders for the Armed Force because, according to his conception, a conflict with Poland would also involve the Western Powers. This conception is identical with the conclusions, Herr von Ribbentrop drew from his opinion of the European situation, voiced in the already mentioned document TC 75.

Ambassador Schmidt has testified here, that it was Herr von Ribbentrop who on 25 August 1939, after the Hitler-Henderson meeting, sent him to Sir Neville Henderson with the verbal communique presented as TC 72/69 in which the contents of Hitlers propositions were drawn up. With it Herr von Ribbentrop combined the urgent request, at once and in person to warmly recommend to the British Government Hitler's proposition. According to the English Blue Book, Sir Neville Henderson could not refrain from calling these proposals exceptionally sensible and sincere. They did not represent the usual Hitler proposals, but "proposals of the League of Nations".

Anyone studying the negotiations of the succeeding fateful days can not deny that everything was done on the German side, to get at least negotiations on a workable basis underway. The opposite side would not have it thus, because the decision had been made to take action this time. The good services of England ended with the breaking off of all mediation without having been able to bring Poland to the table of negotiations.

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Herr von Ribbentrop has been blamed for having practically defeated the purpose of the last decisive discussion with the British Ambassador Henderson by having read the German proposals to Poland so fast, contrary to all diplomatic custom and international courtesy, that Sir Neville Henderson could not understand them, and, hence, could not pass them on. The interpreter, Ambassador Schmidt, was present at this decisive discussion. He has testified here, under oath, that this statement is not true. One may consider Hitler's order, to acquaint Sir Neville Henderson only with the substance of the memorandum, as unwise. The fact is that not only did Herr von Ribbentrop read the entire contents at a normal speed to the British Ambassador,

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but he also, having the interpreter present, made it possible for Sir Neville Henderson to become familiar with the entire contents and, moreover, to have explanations given on it. Besides, upon the initiative of Reichsmarshall Goering, it was transmitted to the British Embassy during the same night by dictation to Counsellor of the Embassy Forbs. Thus the British Government should have been able to render the good services offered for opening negotiations based on positive proposals.

By reason of these facts here deposed, one must rightly doubt the allogation to be true, that the defendant had done everything to avoid peace with Poland.

At the beginning of my defence speech I stressed, that legal considerations concerning aggressive war are not possible without knowledge of the presupposition leading to an armed conflict. Before I proceed to the legal aspects of the conflict with Poland, may I make some additional statements concerning the causes that led to the war.

The period between two world wars is characterized by the mutual reactions of those powers which were satisfied and those which were dissatisfied. It seems to be an inevitable law that, after great war shocks, the victorious states tend as far as possible towards the reestablishment of the pre-war status and pre-war mentality, wheras the conquered are forced to find a way out of the consequencesof their defeat by newmeans and methods. That way the Holy Alliance came about after the Napoleonic wars, and under Metternich's leadership, using legitimacy as an authorization, it tried to ignore the effects of the French Revolution.

What the Holy Alliance did not achieve, the League of Nations did not succeed in either.

Created in an atmosphere of fervent belief in human progress, it was quickly transformed into a tool of the satisfied states. Every effort to "reinforce" the League of Nations, meant a new bulwark for maintaining the status quo. Under the elegant diction of juridical proceedings power-politics continued. Besides, the obsession by the idea of "securite" soon deprived the newly-created body of any breath of freshness and life.

In this fashion naturally a solution of the problems, created by the end of the first world-war could never be found. In international relations the interests of conservative powers content with the status quo and those of the revolutionary powers trying to do away with it, were found to be in growing conflict. It could only be a question of time, when under those circumstances the political initiative would pass to the dissatisfied powers. The formation of this front depended exclusively on the force of the revolutionary spirit, which cristallized in opposition to political complacency and longing for the past. On this fostering-soil grew the doctrines of National Socialism, Fascism and Bolshevism, obscure in many parts of their programs, elastic and incoherent in others. Their power of propaganda was based not so much on their programs but on the fact that they admittedly brought something new and that they did not exhort their followers to worship a political ideal, that had failed in the past.

The economic crises of the post-war period, the controversies about reparations and the occupation of the Ruhr,

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the fact that the democratic governments were not capable of attaining anything for their peoples in need from the other democracies, unavoidably led to a test of the doctrines which had not yet been tried out. The practical results of this revolution, as we experienced them in Germany after 1933, could, aside f the social program, only consist in abolishing the peace settlements of 1919, whichwere a classical example of the failure in understanding of the revolutionary character of a world-crises. These tasks were for this revolution no juridical questions but doctrines, exactly as it had for a long time been a doctrine for the satisfied states, to keep up the status quo at all costs, eventually at the costs of a new world-war.

Only he who does not shut his eyes before these facts can judge the political crises of the past decade.

Every revolution has but two possibilities; either it meets so little resistance, that eventually conservative tendencies develop and an alloy with the old order is formed, or the antagonistic forces are so strong, that finally the revolution breaks because of its having oversharpened its own means and methods.

National Socialism went the second way, which began in so unbloody a manner and, in parts, with a remarkable bias towards tradition. But it too could not escape the laws, inherent in history. The aims were too high for one generation, the revolutionary essence too strong. The successes in the beginning were stupefying. But they also caused a lack of criticism as to the methods and aims.

It would most probably have been achieved to all larger German groups in the Central European space, if, at the end -- I mean insetting up the protectorate Bohemia and Moravia and in following up the Danzig Corridor question -- revolutionary speed and methods had not been carried to excess as a result of previous successes. No soberly judging person will deny the right to gain a solution in theDanzig Corridor question, delicate as it was.

The Prosecution wants it, that, in reality, Danzig was but a pretext. Seen from the state of affairs in 1939 this cannot be proved. But

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it is sure that the opposed party, to , was concerned with other things but the keeping up of the status quo in the East. National Socialism , and with it in its newly gained strength, the German Reich, had become such a danger in the eyes of the others that after Prague, one was determined to make any further German enterprise a "test case", wherever it should happen.

I have already said, that the revolutionary process in Central-Europe was caused in the first place by economic conditions of "Versailles".

At Versailles on Germany was imposed a treaty of peace, of which it was well known, that the conquered could ndt comply with its economic provisions.

THE PRESIDENT: Dr. Horn, the Tribunal thinks that sentence, at any rate, is objectionable on the ground that I have already stated.

DR. HORN: Mr. President, I am not referring to the origin of the Versailles Treaty, but only to its ramifications, which are generally known, and I wanted to emphasize the ramifications, but I have completed this thought, and I do not wish to make any further reference to it.

THE PRESIDENT: Go on, Dr. Horn.

DR. HORN: Many things have been said here about the slogan "L e b e n s r a u m". I am convinced that this word would never have become a political program, if after the first world-war one would have given Germany the possibility to link up with the world markets, instead of strangling her economically. By systematically cutting her off from all places where raw materials occurred in the world - all this for "securite" reasons - one of course fed the tendency towards Autarky, the inevitable way out from the barring from the world markets, and, at the same time, one allowed, as the economic situation became more aggravated, the cry for Lebensraum to fall on fertile soil.

So Stalin is right, when he says:

"It would be erroneous to believe that the second world-war came about in a haphazard way or resulted from faults of one or the other of the statesmen, though such faults were made without doubt. In reality the war resulted inevitably from the development of international economic and political forces based on modern monopolistic capitalism."

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Professor Jahrreiss has already thoroughly proven in his basic arguments concerning the legal and the actual signification of the Kellogg agreement that the Defense cannot attach to this war prevention program the meaning given to it by the Prosecution.

It is true that war has been previously declared an international crime, especially at the 8th League of Nations assembly of 1927; however, at preliminary conversations - and the fact has been proven by documents already submitted to the Court - it was agreed upon that this declaration does not make war a crime in any legal sense, but it is rather the expression of a wish to prevent, for the future, international catastrophes on a world war I scale. Moreover, neither the U.S. nor the U.S.S.R. participated in the League of Nations resolution of 1927.

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Any further projects of outlawry of war, in the period between World Wars I and II, remained mere projects -- and the British prosecutor had to acknowledge this in the course of his significant argumentation -- because practical politics could not follow these moral postulates.

All these experiments -- and they are by no means few -- clearly show that the problem of definition lies in the difficulty of condensing a political event, depending upon a host of components, into a juridical concept susceptible of covering any of the many-shaped cases occurring in fact. The failure to formulate a definition which could be used in international law has led to the fact that, instead of working out universal characteristics to be used in every single case, the designation of the aggressor has been left to the decision of an organ superior to the contending parties. In such a way, the question of defining the aggressor became the question: "quis judicavit", i.e. "who designates the aggressor". From this decision follows a new difficulty: "What is to be done against the aggressor?"

Previous to the attempt of settling in a general way the concept of aggression and the sanctions against the aggressor, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory, anarchic situation, the United States, under Secretary of State Bryan --

THE PRESIDENT (Interposing): Isn't this really arguing the same questions that Dr. Jahrreiss has already argued?

DR. HORN: Mr. President, I have tried not to mention those matters set forth by Professor Jahrreiss. Professor Jahrreiss, in his explanation, concentrated on the Kellogg Pact. I shall try to confine myself to the legal concept of wars of aggression.

THE PRESIDENT: Yes, but the Tribunal only granted the right to have an additional counsel deal with the general questions of law in the view that the other counsel were not going to deal with the same questions of law. Of course, you are not using the words of Dr. Jahrreiss, I should not expect you to do that, but you are arguing the very same topics.

DR. HORN: Mr. President, it had been agreed originally; and, as the Professor showed in his expert opinion, every other counsel has the right to take

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an attitude quite different from the one he designated.

Professor Jahrreiss concentrated chiefly on the Kellogg Pact and its consequences. I am defining my attitude toward aggressive war, and, as the President emphasized the other day --

THE PRESIDENT (Interposing): Just a moment. What is involved, then, is that the Tribunal is going to hear twenty arguments upon the general questions of law; and surely it can scarcely have been thought by defendants' counsel that the Tribunal proposed to hear twenty arguments on the general questions of law and also hear Dr. Jahrreiss on it. The only purpose of hearing one counsel was to have the general questions of law dealt with by one counsel alone, and that the others should not speak upon it.

DR. HORN: Mr. President, may I emphasize once more --

THE PRESIDENT (Interposing): Just a moment. The Tribunal will adjourn.

(A recess was taken.)

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DR. DIX: My Lord, may I humbly ask the High Tribunal to give me permission to make just a rather short explanation to the matter which has just taken up the attention of the Tribunal? I should like to remind you of the fact that the initiative to take up certain legal themes and have them dealt with by Professor Jahrreiss, that is a matter which was suggested by the defense and at that time the defense in that way also wanted to follow the High Tribunal's suggestion of brevity and to save time. I should like to ask the High Tribunal to protect us from the fact that this suggestion which we at that time made to the High Tribunal and which was granted by the High Tribunal, not to be used against us, in that the resolution which was taken be interpreted rather broadly. I do not have the resolution before me and I do not intend to deal with it and discuss it, but I should like to say one thing. Professor Jahrreiss did speak and he wanted to speak and he wanted to confine himself to two topics whic, of course, were of a general nature. He spoke about, first, the individual punishable qualities of the aggressive war and the legal position of the Fuehrer decree. These two problems were to be dealt with by Dr. Jahrreiss and these were the two topics that he actually did deal with.

Now, in the course of this proceedings, we are met with a series of problems of a legal nature, which are of a general nature and in a larger or a smaller scale concern each of the defendants, such as, I should like to remind you of the various questions of international law and the question of hostages and forced labor, and the question dealing with the naval fighting and other general questions, and, above all, the matter which my colleague, Dr. Horn, broached and on which problem he was stopped. There is the question: "What is an aggressive war?" There are large basic differences between a military aggression, a juridical aggression, or military aggression. Those are matters which Dr. Jahrreiss did not concern himself with at all and he was not to concern himself with these problems and Dr. Horn understood that this was the primary promise of his speech. I do not wish to arrive at any conclusions but I should like to ask the High Tribunal that the High Tribunal kindly do not put us into the rather questionable situation that we delegate a certain collection of questions and now, through that fact, be put into a situation which he really cannot be held responsible for, that question which

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we really feel we need to discuss, that we should be prevented from speaking about them -- matters about which Dr. Jahrreiss couldn't concern himself with. And one more thought; it would be quite possible, and I believe that you gentlemen on the bench will agree with me; this is a purely theoretical matter -- would be quite possible that one would represent a view represented by Jahrreiss. Of course, I do not contradict Dr. Jahrreiss but I am speaking theoretically only. If the first speaker broached and dealt with a certain topic, would it therefore be impossible for any of the following defense counsel, be impossible for him, not for us to deal with this matter? Would he be forced to be silent on such a matter? It seems to me that that couldn't be the purpose of the High Tribunal's ruling; for purposes of brevity, that was the chief aim of Dr. Jahrreiss. I believe we are all of the same opinion. We ask that it should not be interpreted too formally and if someone in good faith says he had to deal with this matter for good reasons, that he be given the possibility to speak further on these subjects even though Dr. Jahrreiss has dealt with the matter; and I ask that he be permitted to speak, if he has that attitude, than try to stop him from speaking when it is a matter for legal consideration.

THE PRESIDENT: The Tribunal has been considering this matter and they are fully aware, of course, of the difficulties which may possibly arise if there were differences of opinion among the defendants' counsel upon questions which had been dealt with by Dr. Jahrreiss. They did anticipate when they made the order which specifies that Dr. Jahrreiss should speak on legal issues arising out of that Indictment and Charter which are common to all the defendants. Those are the words of the order, that he would deal with all the issues which were common to all the defendants and in the absence of some difference of opinion, that the other defendants would be prepared to adopt his argument, but the Tribunal thinks that the questions of law may be to some extent very various and difficult and that the only rule which is possible for them to lay down at this stage is that there must be no real repetition by defendants' counsel. The Tribunal apprehends that defendants' counsel will see the necessity for such a rule as that. It cannot be in the interests of an expeditious trial that argument should be repeated over and over again and this Tribunal desires to point out to the defendants' counsel

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that such repetition upon general matters only tends to distract the attention of the Tribunal from the real defenses of the clients whom they represent and therefore the Tribunal hopes that the defendants' counsel will try to cooperate in this matter and confine such legal arguments as they think it right to present to the Tribunal, to arguments which had not been addressed to the Tribunal by counsel who preceded them -- either Dr. Jahrreiss or any other counsel. That is all that I need to say at this stage; and as it is now five o'clock the Tribunal will adjourn.

(The Tribunal adjourned until 8 July 1946, at 1000 hours)